No. 05-19-00607-CV

PETER BEASLEY, Appellant, v. SOCIETY FOR INFORMATION MANAGEMENT, ET. AL, Appellees.	§	IN THE 5th DISTRICT COURT COURT OF APPEALS DALLAS, TEXAS

No. 05-19-01111-CV

PETER BEASLEY, Appellant, v. SOCIETY FOR INFORMATION MANAGEMENT, ET. AL, Appellees.	§	IN THE 5th DISTRICT COURT COURT OF APPEALS DALLAS, TEXAS

OPPOSED 1ST SUPPLEMENTAL MOTION TO CONSOLIDATE APPEALS

TO THE HONORABLE JUSTICES OF SAID COURT:

COMES NOW, Appellant, Peter Beasley, ("Beasley"), and states the following:

1. On September 15, 2019, appellant filed his motion to consolidate the two pending appeals to prevent the court reporters and court clerks from wasting efforts, and duplicating documents.

2. The court has not ruled on the consolidation motion yet, but the Clerk of this court has stepped-up and stepped-in October 15, 2019, to stop the wasteful, duplicate efforts pending this court's ruling on the consolidation. Exhibit A.

3. Appellant's consolidation motion also sought to spare appellee's the expense of filing multiple briefs in yet another appeal[1]. However, appellees have filed one brief on October 10, 2019 in this court. Appellees brief, however was filed in flagrant disregard to the briefing rules. The brief quite frankly, with its pattern of false legal arguments and false, unsupported facts, was filed by attorney Soña Garcia in contempt of this court. October 16, 2019, Appellant moved to strike appellees' brief. EXHIBIT B.

4. Although appellees have now filed a brief, Appellant renews his request for the court to consolidate appeals **No. 05-19-00607-CV** and **No. 05-19-01111-CV** into the earlier appeal – which already has the reporter's records and clerk's records filed.

5. Appellant renews his requests for 10 to 15 days to file an amended brief, and if the court chooses to allow, give Appellees 10 days to file a response.

Argument & Authorities

6. Appellant argues that appellees October 10, 2019, brief with its failures to abide by the Supreme Court's briefing rules may allow this court to make certain presumptions – **that appellees have no valid defense of the trial court's action to dismiss appellant's lawsuit**.

[1] Appellees also filed a brief in the Texas Supreme Court in No. 19-0041 on the same day

7. A quick read of Appellees' Brief, Appellant's Motion to Strike and Appellant's Brief reveal the **utter waste of judicial resources appellees have continued to cause**. Except for appellees' pattern of rule violations and their regular presentation of false facts and false legal arguments, this conflict would have been over years ago. EXHIBITS B & C.

8. Appellant meritorious claims remain!

9. **Meritorious Claim #1**. The SIM-DFW Texas non-profit organization is operating in violation of Texas law with an illegally constituted board, which judicial intervention serves to prevent. *See*, *Greater Fort Worth & Tarrant County Cmty. Action Agency v. Mims*, 627 S.W.2d 149 (Tex.1982)(a board so impaired that it was no longer organized or functioning as it was established – i.e. when the board removes one of its own without the approval of the members in contravention of the bylaws). The SIM-DFW bylaws hold that the only way to remove a Director is by vote of the members,[2]

> SECTION 4. REMOVAL: Any officers or other members of the Executive Committee **may be removed by the vote of a majority of the members** of the Chapter attending any Chapter meeting. Such a vote must be recommended and scheduled by the Executive Committee. Notification to membership that an election will be conducted on removal of an officer or member of the Executive Committee must be included with the notice of Chapter meeting.

[2] C.R. 1196, SIM-DFW Bylaws, Article IV, § 4.

However, Janis O'Bryan, the SIM-DFW President, admits in her deposition that the board attempted to remove Beasley, a member-elected Director, from the board by side-stepping the protections offered to Beasley without ever putting the issue to the members for a vote – *something the members would certainly not have approved* and still would not do.

March 24, 2017 Deposition of Janis O'Bryan, SIM President

Q. Okay. It says here that members of the executive committee and officers may be removed, but it's by a vote of the majority of the members, correct?

A. Yes.

Q. Okay. You did not submit this to a vote of the members?

A. No.

C.R. 1151, Deposition 195:20 – 196:1

.....

Q. (BY MR. FRYAR) All right. Is there anything in the bylaws that states explicitly, you have to be a member to be on the board?

A. Does it say it explicitly?

Q. Uh-huh.

A. No.

C.R. 1150, Deposition 193:11 – 16

10. So, instead of following its bylaws, SIM-DFW sought to publically humiliate, embarrass and expel Beasley as a member of the organization—but

their approach was ineffective from removing Beasley from the board. Their act though has a damning consequence, rendering the board fatally illegally constituted since April 19, 2016, and appellees did not challenge this claim in the September 20, 2018, vexatious litigant hearing.

11. In their October 10, 2019, brief appellees **falsely** defend against the reality of an illegally constituted board by saying Beasley's claim is 1) barred under the theory of judicial non-intervention, 2) SIM-DFW already prevailed against Beasley on that claim, and 3) Beasley as a non-member has no standing to assert the claim – where **both in fact and at law their assertions are simply not true**.

12. **Meritorious Claim #2.** SIM-DFW has been on a defamation and disparagement campaign against Beasley since 2016 – well beyond appellees' false claim that the defamatory statements by the defense counsel were privileged. Appellant cited numerous dates and acts of defamation in his petition[3]. In Appellees' brief, **they attempt to lie** past this meritorious claim by saying the defamation claim is barred under attorney-client privilege[4] with it being *exclusively* based on attorney falsehoods.

13. **Appellees, through their lawyers, are not telling the truth**.

---

[3] C.R. 637, 641, Count #5, ¶s 46, 68 - 70.

[4] Appellees' brief pg. 38

14. **Meritorious Claim #3.** SIM-DFW in their October 10, 2019, brief concede they did not file the 1) vexatious litigant motion Day 1 in Collin County, 2) they countersued Beasley in Collin County, 3) and they paid the transfer and filing fees in Dallas County to keep the fight going and pursue Beasley; although, he had done nothing in Dallas County to file, maintain or prosecute the lawsuit as a plaintiff in Dallas County. Defendants immediately imposed a stay and Beasley has been unable for over a year and a half from prosecuting his claims – **and has only been as a defendant in Dallas**. Their motion was filed too late and barred, under laches, – where the vexatious litigant statute demands prompt action to curb frivolous lawsuit, and does not allow for an offensive use of the statute across multiple counties when all of the cited claimed "vexatious acts" of Beasley were known by Defendants Day 1 in Collin County.

15. **Meritorious Claim #4.** SIM-DFW failed in the September 20, 2018, vexatious litigant hearing to introduce any evidence to defeat the claim that Beasley was fraudulently induced[5] to serve on the board based on an oral contract with assurances that the organization follows its bylaws and that he would be provided Director's and Officer's defense insurance protection, and induced him to serve on the board through oral and written representations that the organization

[5] C.R. 639, ¶ 60.

follows Robert's Rules of Order which require a member to be asked to resign before instituting expulsion proceedings.

16. **Meritorious Claim #5.** Defendants Burns and O'Bryan at the September 20, 2018, vexatious litigant hearing and in their brief highlight no evidence and argue no competent Texas statute or case law which holds that a derivative suit against individual board members of a Texas non-profit corporation are not allowed under Texas law. Their only cited case *Bridgewater v. Double Diamond-Delaware, Inc.* 2011 U.S. Dist. LEXIS 47248, *25 (N.D. Tex. April 29, 2011) is inapplicable where several competent Texas courts have supported the concept of such derivative lawsuits, *See*, *Mitchell v. LaFlamme*, 60 S.W.3d 123, 130 (Tex. App.-Houston [14th Dist.] 2000, no pet.). Appellees brought forward no evidence that appellant has no reasonable probability to prevail on this claim.

17. **All of appellee's false legal arguments and false facts cannot defeat the multitude of meritorious claims in Beasley's 2nd Amended Petition**[6].

18. At the September 20, 2018, vexatious litigant hearing appellees failed to call any witnesses and did not introduce any evidence to prove Beasley had no reasonable probability to prevail on ALL of his claims. *See*, *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914, 919 (Tex. App.-Dallas 2013, no pet.) (noting also

[6] C.R. 629 – 648.

that a defendant who fails to offer any evidence showing why the plaintiff could not prevail on his suit has failed to meet its burden to prove a litigant to be vexatious).

19. **The vexatious litigant declaration against appellant is easily seen-through as being erroneous**.

20. This legal fight has been on-going for more than three and a half years in Dallas County District, Collin County District, Dallas County, and U.S. District trial courts, and with multiple proceedings in the Dallas and the Texas Supreme courts of appeal. The moving force behind this contentions litigation is appellees' counsel's inability to follow the rules of court, their inability to abide by the rules of evidence and their unwillingness to honor their professional responsibilities—as evidenced in their October 10, 2019, Appellee's Brief filed by attorney Soña Garcia.

21. Rather than 1) consolidating the appeals, 2) striking appellees brief, and 3) this court ruling on the pending Motion for Rehearing for Temporary Orders to allow a Rule 12 challenge to defense counsel, in the interest of justice, Tex. R. Civ. P. 1, this court can:

a) immediately sustain Appellant's Point of Error #1 that appellee's failed in their burden to show appellant had no reasonable probability to prevail on his claims,

b) reverse the trial court's ruling to declare Beasley a vexatious litigant, and

c) reinstate the lawsuit **and remand the whole "mess" back to the trial court**, and

d) dismiss appeal No. 05-19-01111-CV as being moot.

Certainly, then appellees would then be interested in discussing settlement to bring a permanent resolution to ALL of the various legal battles between the parties, currently underway in this and the Supreme Court, or yet forthcoming.

WHEREFORE, Beasley requests this court:

1) Based on appellees' flagrant October 10, 2019, brief presume and order that appellees have no valid legal defense, Tex. R. App. P. 38.9(b), and sustain appellant's point of error #1 and remand the cause to the trial court for further proceedings, or in the alternative,

2) Consolidate appeals No. 05-19-00607-CV and No. 05-19-01111-CV, allow appellant 15 days to amend his brief, and for appellees' brief, if the court allows, to be due within 10 days later.

Plaintiff prays for general relief.

Respectfully submitted,
_/s/Peter Beasley____
Peter Beasley, pro se
P.O. Box 831359
Richardson, TX 75083-1359
(972) 365-1170
pbeasley@netwatchsolutions.com

Certificate of Service

I hereby certify that on the 17th day of October 2019, a true copy of the foregoing instrument was served on opposing counsel for the defendants by electronic means and the electronic transmissions were reported as complete.

/s/Peter Beasley
Peter Beasley

Court of Appeals
Fifth District of Texas at Dallas

600 COMMERCE STREET, SUITE 200
DALLAS, TEXAS 75202
(214) 712-3400

LISA MATZ
CLERK OF THE COURT
(214) 712-3450
theclerk@5th.txcourts.gov

SUSAN FOX
BUSINESS ADMINISTRATOR
(214) 712-3417
susan.fox@5th.txcourts.gov

FACSIMILE
(214) 745-1083

INTERNET
WWW.TXCOURTS.GOV/5THCOA.ASPX

October 15, 2019

Mr. Peter Beasley
P.O. Box 831359
Richardson, Texas 75083-1359

RE: Court of Appeals Number: 05-19-01111-CV
Trial Court Case Number: DC-1 8-05278

Style: Peter Beasley
v.
Society of Information Management, Dallas Area Chapter; Janis O'Bryan and Nellson Burns

Dear Mr. Beasley:

The Court is in receipt of your October 15, 2019 letter concerning the reporter's record. Pending the Court's determination of your motion to consolidate, the reporter's record need not be filed. The clerk's record also need not be filed.

Respectfully,

/s/ Lisa Matz, Clerk of the Court

ltr/lp

cc: Robert A. Bragalone
Sona J. Garcia
Peter S. Vogel
Melba Wright
Janet L. Dugger
Felicia Pitre

EXHIBIT A

ACCEPTED
05-19-00607-CV
FIFTH COURT OF APPEALS
DALLAS, TEXAS
10/16/2019 2:17 PM
LISA MATZ
CLERK

NO. 05-19-00607-CV

PETER BEASLEY,	§	**IN THE 5th DISTRICT**
	§	
Appellant,	§	
	§	
v.	§	**COURT OF APPEALS**
	§	
SOCIETY OF INFORMATION MANAGEMENT, ET. AL,	§	
	§	
	§	**DALLAS, TEXAS**
Appellees.	§	

MOTION TO STRIKE APPELLEE'S NUMEROUS BRIEFING VIOLATIONS, TO STRIKE UNSUPPORTED FALSE STATEMENTS AND TO STRIKE BRIEF

TO THE HONORABLE JUSTICES OF SAID COURT

COMES NOW, Appellant, Peter Beasley, pursuant to Rule 38.1, 38.2, and 38.9, who files Appellant's Motion to Strike Numerous Briefing Violations, to Strike Unsupported, False Statements and to Strike Brief, and states the following:

Table of Contents

1. Appellees owe to provide candor to this court and are obliged to follow the Supreme Court rules. They have failed at both.

EXHIBIT B

APPELLEE'S VIOLATION OF THE STATEMENT OF THE CASE REQUIREMENTS

2. *Statement of the Case*. The brief must state concisely the nature of the case (e.g., whether it is a suit for damages, on a note, or involving a murder prosecution), the course of proceedings, and the trial court's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts. Tex. R. App. P. 38.1(d). This rule applies to both the appellant's and appellee's brief. Tex. R. App. P. 38.2(a)(1).

3. Irrespective of and in direct violation of the rule, appellee's state:

[Appellee's] STATEMENT OF THE CASE

> Appellant Peter Beasley originally filed his claims against SIM-DFW on March 17, 2016 as Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas ("Original Case"). The parties litigated the Original Case for 18 months when, on the eve of Defendant SIM-DFW's Motion for Summary Judgment, and the due date for his response, Beasley nonsuited without prejudice his claims and those of his company, Netwatch Solutions, on October 5, 2016.
>
> The case on appeal was filed November 30, 2017 ("2017 Case") in Collin County, Texas, alleging claims that all arose out of the same circumstances alleged by Beasley's Original Case. The 2017 Case was transferred to Dallas County following Appellees' Motion to Transfer Venue.
>
> Appellees moved to declare Beasley a vexatious litigant on April 19, 2018. The trial court heard Appellees' motion on September 20, 2018 and on December 11, 2018 issued an order finding that Beasley is a vexatious litigant within the meaning of TEX. CIV. PRAC. & REM. CODE § 11.054. The December 11, 2018 order included the language pursuant to § 11.101 prohibiting Beasley from *pro se* filing new litigation without permission from the appropriate local administrative judge. Beasley is listed on the Texas Office of Court Administration List of Vexatious Litigants Subject to Prefiling Orders.

> While Beasley has filed multiple notices of appeal, his initial notice was a notice of *interlocutory* appeal, filed May 21, 2019. The *second* notice of appeal was filed May 27, 2019. An *amended* notice of appeal was also filed July 16, 2019 and a *final amended notice of partial appeal* filed on August 22, 2019. Beasley refers to the December 11, 2018 order as the "prefiling order" which he claims is the sole basis of this appeal. However, the December 11, 2018 was an interlocutory order and this appeal is untimely.
>
> Appellee's Brief pg. 1 -2. Exhibit A.

4. One-hundred percent (100%) of appellee's 'statement of the case' is in violation of Rule 38.1, as it discusses the facts, adds facts not supported by the record and it makes legal arguments. Tex. R. App. P. 38.1(d).

5. Appellee's 'statement of the case' should be stricken in its entirety.

APPELLEE'S VIOLATION OF THE STATEMENT OF THE FACTS REQUIREMENTS

6. Within briefs on appeal, all statements of fact must be supported by references to the record. Tex. R. App. P. 38.1(d). This rule applies to both the appellant's and appellee's brief. Tex. R. P. App. 38.2(a)(1). Further, a court of appeals is obliged to accept unchallenged "facts" from the appellant as being true, where the appellee has the opportunity in their brief to contradict any erroneous or unsupported facts of the appellant.

7. However, the appellant has no such assurance to challenge false facts and briefing violations of an appellee in a Reply Brief, as the court may ignore this optional brief and rule without considering it. Tex. R. App. P. 38.3 (the appellant

may file a reply brief addressing any matter in the appellee's brief. However, the appellate court may consider and decide the case before a reply brief is filed.).

8. Therefore, appellant brings this motion to strike all statements purported as "facts" by appellee which are not supported by the record.

9. Irrespective of and in direct violation of the rule, appellee's state:

[Appellee's] STATEMENT OF FACTS

A. Beasley Sues SIM-DFW, Nonsuits on the Eve of Summary Judgment, and Then Sues SIM-DFW Again.

The Society for Information Management is a national, professional society of Information Technology ("IT") leaders whose goal is to connect senior level IT leaders with peers in their communities, to provide opportunities for collaboration to share knowledge, provide networks, give back to local communities, and provide its members with opportunities for professional development. Locally, Appellee is known as SIM-DFW and is one of the largest chapters in the organization, with more than 300 members. SIM-DFW meets most months to network and discuss important managerial and technical issues facing IT practitioners. Beasley was a member of SIM-DFW until April 2016 when he was expelled from the Chapter by vote of the Board of the Directors.

1. The Original Case and Award of $211,032.02 in Attorneys' Fees to SIM-DFW.

Before expelling Beasley, the Executive Committee planned to seek his resignation. However, before the Executive Committee was able to seek his resignation, Beasley sued both his own organization and the volunteers who donate their time to sit on its Board of Directors.

During the Original Case, Beasley amended his claims multiple times. In the Sixth Amended Petition, Beasley added several declaratory judgment act claims alleging that (1) the April 19, 2016 expulsion meeting was void because it violated the Texas Business Organizations Code; (2) the actions taken by the SIM-DFW Board following the April 19, 2016 meeting were

invalid absent Beasley's ratification; and, (3) SIM-DFW was prohibited from using member funds to benefit non-members. Beasley also alleged that his due process rights were violated because SIM-DFW did not provide him with due process related to his expulsion.

SIM-DFW filed a motion for summary judgment arguing that the doctrine of judicial non-intervention required dismissal of all of Beasley's claims, with the hearing set for October 12, 2017. Beasley nonsuited all of his claims on October 5, 2017, the date his response to SIM-DFW's motion for summary judgment was due.

After the nonsuit, SIM-DFW moved for, and was declared, the prevailing party on Beasley's declaratory judgment act claims.[12] SIM-DFW was awarded $211,032.02 in attorneys' fees for the defense of the declaratory judgment act claims.[13] Beasley filed multiple post-judgment motions, seeking recusal of the judge,[14] mandamus in both the Fifth Court of Appeals and the Texas Supreme Court,[15] and all manner of post-judgment relief.[16] Eventually, Beasley appealed the award of attorneys' fees.[17] The Fifth Court of Appeals affirmed the award.[18] Beasley then petitioned the Texas Supreme Court for review.

2. Beasley's 2017 Case, Appellee's Motion to Transfer Venue, and Return to Dallas County.

At the same time he was seeking review of the attorneys' fees award, Beasley filed a nearly identical case against SIM-DFW and Appellees Janis O'Bryan and Nellson Burns in Collin County, i.e., the 2017 Case.[19] Appellees first moved to transfer venue, arguing that Beasley was engaging in forum-shopping and that proper venue for the 2017 Case was Dallas County.[20] Thereafter, on January 22, 2018, Appellees filed their Original Answer, General Denial, and Affirmative Defenses subject to the Motion to Transfer Venue.[21]

B. The Timely Filed Vexatious Litigant Motion Stays Litigation and Beasley is Found Vexatious.

The Collin County District Court transferred the 2017 Case back to Dallas County in April 2018.[22] On April 19, 2018, when the 2017 Case was in the process of being transferred to Dallas County, Appellees filed a Motion to

Declare Peter Beasley a Vexatious Litigant.[23] The Vexatious Litigant Motion was filed three (3) days before the expiration of the filing deadline contained in TEX.CIV. PRAC. &REM. CODE § 11.051.[24] In error, Beasley disputes the timeliness of the filing.

By statute, the filing of the vexatious litigant motion **stayed all litigation activity**. TEX. CIV. PRAC. & REM. CODE § 11.052. Appellees' Vexatious Motion was heard on September 20, 2018.[25] Beasley was represented by counsel at this hearing.[26] Beasley's counsel even requested an opportunity to provide post-hearing briefing, which was granted.[27] Counsel did not request that Beasley testify in his own defense, did not demand rulings on his objections, and did not present any witnesses on behalf of Beasley.[28] Appellees' counsel provided evidence and argument establishing that Beasley had no reasonable probability to prevail on his claims against Appellees. Appellees also provided the trial court with evidence proving that Beasley's vexatious behavior more than meets the numerosity requirements of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) and (B). Following the hearing, the Court accepted letter briefs from both parties regarding (1) the timeliness of Appellants' Vexatious Litigant Motion and (2) Beasley's Reasonable Probability of Success on the Merits.[29]

12 CR 22-26.
13 CR 214-216.
14 CR 23-26; 217-523.
15 CR 23-26; 217-523.
16 *Id.*
17 CR 769-886.
18 *Beasley v. Society of Information Management et al*., 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018).
19 2019 10 07 Supp. CR Vol. 1 4-19.
20 CR 22-628.
21 2019 10 07 Supp. CR Vol. 1 20-23; *see also* CR 7 (docket sheet noting filing on January 22,
2018); *see also* CR 991 (Collin County docket sheet).
22 CR 661-662.
23 CR 663-989.
24 CR 663-664.
25 RR Vol. 1.
26 RR Vol. 1 at p. 2.
27 RR Vol 1, 11:23-12:12; 79:18-88:9.
28 Beasley's assertion that Appellee's Janis O'Bryan and Nellson Burns were subpoenaed to testify at the vexatious litigant hearing is false. Brief at 13-14. O'Bryan and Nellson were subpoenaed to appear as witnesses in Beasley's Rule 12 Motion

> hearing, which did not take place. RR Vol 1 78:20-79:17. This clarification of the subpoenas was unchallenged by Beasley's counsel.
> 29 CR 1089-1258.

Appellee's Brief pg. 4 - 8. (Exhibit A)

10. Appellee's 'statement of the facts' highlighted above in yellow are completely without any reference to this record, and should be stricken in their entirety. Tex. R. App. P. 38.1(g).

11. Appellee's 'statement of the facts' highlighted above in aqua are argument, and should be stricken in their entirety. Tex. R. App. P. 38.1(g). For instance, the vexatious litigant statute imposes a stay – which does not state that it stays ***all litigation***, as the record evidences a recusal motion of the judge hearing the vexatious litigant motion was heard and sustained.[1] Furthermore, during the stay appellees moved for and were granted a transfer of the lawsuit from one court to another. [2] Clearly, all litigation is not stayed.

12. Appellee's 'statement of the facts' highlighted above and below in pink are false, and should be stricken in their entirety. Tex. R. App. P. 38.1(g).

a. "O'Bryan and Nellson were subpoenaed to appear as witnesses in Beasley's Rule 12 Motion hearing, which did not take place."[3]

[1] C.R. 1086
[2] 2nd Supp. C.R. 91
[3] Appellees' brief pg. 7, footnote 28

i. Nothing in the record indicates for what purpose that O'Bryan and Burns were being called as witnesses, nor would appellees know appellant's litigation strategy.

b. "Counsel did not request that Beasley testify in his own defense, did not demand rulings on his objections, and did not present any witnesses on behalf of Beasley."[4]

i. In reality, Beasley's counsel attempted to present witnesses defendants O'Bryan and Burns[5] – who each did not appear for the vexatious litigant hearing although they had been subpoenaed.

c. "After the nonsuit, SIM-DFW moved for, and was declared, the prevailing party on Beasley's declaratory judgment act claims."[6] "SIM-DFW also prevailed on Beasley's other declaratory judgment act claims, including those seeking a declaration that (1) acts of the SIM-DFW Executive Committee since April 19, 2016 are void and (2) SIM-DFW's charitable giving and

[4] Appellees' brief, pg. 7.
[5] R.R. 09-20-2018 Hearing, 78:20 – 25 (By Beasley's Attorney: "The only evidence that we would propose to present is the testimony of Mr. Burns and Ms. O'Bryan who are not here, who were subpoenaed to be here and who they filed a motion for protective order to prevent from being here.")
[6] Appellees' brief pg. 5

philanthropy violate SIM-DFW's bylaws and articles of incorporation."[7]

i. However, the referenced judgment (Exhibit B) only awards attorney fees, and does not specifically FIND or ORDER that SIM-DFW was declared a prevailing party on any specific declaratory judgment act claims.

APPELLEE'S IMPROPER, FALSE LEGAL ARGUMENTS

13. Appellant specifically contradicts some false facts, false legal arguments, and misstated law provided by appellee in their Argument.

14. Appellees state:

a. "Rule 202(b)(2) addresses the admissibility of the law of other states and does not apply to the admissibility of court documents."[8]

i. This assertion by appellees is false, as evidence Rule 202 specifically includes "court decisions" of other states. Tex. R. Civ. E 202(a).

b. "The defamation and tortuous (sic) interference claims were based ***exclusively*** on communications written by and transmitted

[7] Appellees' brief pg. 33
[8] Appellees' brief pg. 21

by Appellees defense attorneys during the course of the litigation."[9]

i. In reality, appellant's defamation claim **DOES NOT** rely *exclusively* on communications written and transmitted by appellee's defense counsel. Appellant's claim states:

> "Rather than resolve the dispute, SIM Dallas embarked on a campaign to defame and disparage Beasley and his software company, Netwatch Solutions, and to tortuously interfere with business and contractual arrangements. Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, February 5, 2018, **and at other times in meetings and publications to 3rd parties**."[10] "On December 31, 2016, **and at other times**, SIM Dallas published a statement, and that statement was defamatory concerning Beasley. SIM Dallas acted with malice, and was negligent in determining the truth of the statement. Beasley suffered damages."[11]

c. "Eventually, Beasley judicially admitted that the Hartford did provide coverage, which mooted his claim."[12]

i. In reality, Beasley DID NOT judicially admit that his claim was moot, as the overwhelming evidence is that the

[9] Appellees' brief pg. 38
[10] C.R. 637, ¶ 46
[11] C.R. 641, ¶ 68
[12] Appellees' brief pg. 36

entire Original 2016 litigation and its appeal to this court in 2017 was conducted primarily by Beasley *pro se*, why? —because he was not provided insurance defense coverage. Appellees cannot claim Beasley had insurance defense coverage and also claim Beasley proceeded *pro se*.

d. "Beasley erroneously argues that TEX. R. CIV. P. 85 — which speaks only to the contents of original answers — provides that a venue motion is an "answer" within the meaning of CPRC § 11.051."[13]" Beasley's attorneys' advanced this same argument in the trial court and lost."[14]

   i. To the contrary, Beasley argues in his brief that appellees added a ground for defense in their Motion to Transfer Venue – thus per Rule 85, makes that pleading an answer.[15] Beasley does not argue that a Motion to Transfer Venue is by itself an "answer".

[13] Appellees' brief pg. 13
[14] Appellees' brief pg. 14
[15] Appellant's brief pg. 15 ("Defendants added a defense to the lawsuit in their Motion to Transfer Venue, making that pleading an answer, and therefore defendants' April 19, 2018, vexatious litigant motion was 3 days too late.")

ii. None of Beasley's attorneys advanced the theory that the inclusion of a ground for defense in the Motion to Transfer Venue converted that pleading into an "answer". Appellee's false statement that Beasley's attorney advanced the same argument are without reference to the record and should be stricken.

e. "Appellees also argued that a ***seventh case***, *Peter Beasley v. Society for Information Management*, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, met the requirements of § 11.054(1)(B), not § 11.054(1)(A). This case should also be counted for numerosity purposes."[16] Appelles went further, "But as argued in the trial court, Appellees presented this case to the court because Beasley's failure to bring this case to trial within two years is the reason that this one counts and meets the requirements of TEX. CIV. PRAC.& REM. CODE § 11.054(1)(B)."[17] Appellees went even further, "Beasley's 2016 lawsuit against SIM-DFW, a.k.a. the Original Case counts for purposes of the vexatious litigant numerosity requirement under

[16] Appellees' brief pg. 19
[17] Appellees' brief pg. 27

TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B). It is undisputed that the claims filed by Beasley in March 2016 had not been brought to trial or hearing before March 2018. Under § 11.054(1)(B), a claim commenced, prosecuted, or maintained by a pro se plaintiff that has not been brought to trial or hearing counts for purposes of the numerosity requirement."[18]

i. Appellees falsely state that Cause No. DC-16-03141 which was nonsuited within 2 years counts because Cause No. DC-18-05278 did not come to trial within 2 years after DC-16-03141 was commenced. The argument is false, where the two causes are different lawsuits and nothing in § 11.054(1)(B) allows for such overlapping-counting. Every lawsuit nonsuited within two years would never come to trial after two years, as the nonsuit immediately extinguishes the controversy.

f. In keeping with their false Statement of Facts, Appellees argued, "However, the trial court's November 3, 2017 Dallas County Judgment in the Original Case declared SIM-DFW a prevailing

[18] Appellees' brief pg. 30

party on Peter Beasley's declaratory judgment act claims …"[19]

"SIM-DFW also prevailed on Beasley's other declaratory judgment act claims, including those seeking a declaration that (1) acts of the SIM-DFW Executive Committee since April 19, 2016 are void and (2) SIM-DFW's charitable giving and philanthropy violate SIM-DFW's bylaws and articles of incorporation."[20] Appellees went further, "Because the trial court in the Original Case previously declared that SIM-DFW prevailed on Beasley's claim that his expulsion was void and improper, it is axiomatic that the expulsion would deprive him of his membership benefits. That is what expulsion is — removing a member from the organization and the benefits of membership."[21] "There is no basis for this claim and given the resolution of the Original Case, no reasonable probability that Beasley would have prevailed on this claim."[22]

i. In reality, the "Original Case" is not resolved – it remaining on appeal in the Texas Supreme Court. SIM-

[19] Appellees' brief pg. 33
[20] Appellees' brief pg. 33
[21] Appellees' brief pg. 37
[22] Appellees' brief pg. 37

DFW has prevailed on nothing as the "Original Case" was nonsuited, restoring the parties to their original positions, except that Beasley was ordered to pay attorney fees.

g. "In rather surprising disregard for the judicial process, Beasley argues, for the first time on appeal and some 16 months after Appellees first filed the Motion to Declare Beasley Vexatious, that there is "no evidence" that he commenced, prosecuted, or maintained some of these litigations pro se."[23] "In re: Peter Beasley, Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals. Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates."[24] "In re: Peter Beasley, Cause No. 05-17-1032, Texas Supreme Court. Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates."[25] "The record evidence establishes that in each of the litigations presented in the Motion,

[23] Appellees' brief pg. 30
[24] Appellees' brief pg. 31
[25] Appellees' brief pg. 31

Beasley commenced, prosecuted, and/or maintained the litigations pro se."[26]

i. In reality, there is nothing in the record that indicates these referenced lawsuits were commenced, prosecuted or maintained *pro se*, and **nowhere did appellant concede he was *pro se***. Appellant's argument was not made for the first time on appeal, as appellant's written response to the vexatious litigant motion[27] clearly dispute that appellant commenced, prosecuted or maintained sufficient adverse litigations *pro se*.

h. And as falsely stated in their Summary of the Argument, appellees falsely argue, "Beasley's lawsuit focused heavily on his attempts to judicially overturn the decision of the Executive Committee to expel him."[28] "The crux of Beasley's claims against Appellees relate to his expulsion from SIM-DFW in April 2016."[29]

[26] Appellees' brief pg. 31
[27] C.R. 1064 ¶ 46
[28] Appellees' brief pg. 33
[29] Appellees' brief pg. 32

i. In reality, the 2017 lawsuit core claims are for **monetary damages** for torts committed by appellees against appellant[30] and is a different lawsuit than the Original 2016 Lawsuit.

ARGUMENT AND AUTHORITIES

15. It is without question that the appellate rules of procedure should be followed – especially by licensed attorneys from two different law firms. Only when appellate courts are provided with proper briefing may they discharge their responsibility to review the appeal and make a decision that disposes of the appeal one way or the other. *Boiling v. Farmers Branch Ind. Sch. Dist.*, 315 S.W.3d 893. 895 (Tex. App.-Dallas 2010, no pet.). The axiom that *pro se* litigants are required to follow the rules the same as licensed attorneys cuts both ways—licensed attorneys are required to follow the rules too, the same way *pro se* litigants must.

16. The duty for licensed attorneys to follow the appellate rules incorporates their responsibilities under the Texas Rules of Professional Conduct to provide candor to the court, to tell the truth, and to not make false legal arguments and to act fairly in court proceedings. *See* Tex. Disciplinary Rules of Prof. Conduct, Rule 3.03 Candor Toward the Tribunal; Rule 3.04 Fairness in Adjudicatory Proceedings.

[30] C.R. 629

17. It is without question, Rules 38.1 and 38.2 were flagrantly violated with a blatant disregard of the rule to reference facts to the record, with a brazen pattern of making false legal arguments and to present false facts, and unambiguous attempts to misstate the law. The briefing violations, which include outright falsehoods, are serious and are made in contempt of the dignity of this court and in violation of a citizen's rights.

REQUESTED SANCTIONS

18. Appellees' briefing failures are flagrant and their entire brief should be stricken. Appellees' brief has both formal and substantial defects and submission of the case should be postponed until appellees' brief is refiled, Tex. R. App. P. 38.9, or due to the flagrant, intentional disregard of the rules and their pattern of obvious lying, strike the brief and prohibit these particular attorneys **who have never answered the Rule 12 challenge against them** from filing another brief.

SUMMARY

Wherefore, appellant seeks requests appellees' brief be stricken and resubmitted within 5 days, or for other appropriate orders of this court.

Respectfully submitted,
/s/ Peter Beasley
Peter Beasley
P.O. Box 831359
Richardson, Texas 75083
972-365-1170

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October 2019, a true copy of the foregoing instrument was served on opposing counsel through the court's electronic filing system.

/s/ Peter Beasley
Peter Beasley

ACCEPTED
05-19-00607-CV
FIFTH COURT OF APPEALS
DALLAS, TEXAS
10/10/2019 2:02 PM
LISA MATZ
CLERK

In The

Court of Appeals
Fifth District of Texas at Dallas

NO. 05-19-00607-CV

PETER BEASLEY, Appellant
v.
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS O'BRYAN AND NELLSON BURNS, Appellees

---

On Appeal from the 191st Judicial District Court,
Dallas County, Texas
Trial Court Cause No. DC-18-05278

APPELLEES' BRIEF

Respectfully submitted,

GORDON & REES

/s/ Soña J. Garcia

ROBERT A. BRAGALONE
State Bar No. 02855850
BBragalone@grsm.com
SOÑA J. GARCIA
State Bar No. 24045917
SJGarcia@grsm.com
2200 Ross Avenue, Suite 4100 West
Dallas, Texas 75201-2708
214-231-4660 (Telephone)
214-461-4053 (Facsimile)

FOLEY GARDERE
FOLEY & LARDNER LLP

PETER S. VOGEL
State Bar No. 20601500
PVogel@Foley.com
2021 McKinney Ave. Ste. 1600
Dallas, Texas 75201
214-999-3000 (Telephone)
214-999-4667 (Facsimile)

ATTORNEYS FOR DEFENDANTS

IDENTITIES OF PARTIES AND COUNSEL

Society for Information Management, Dallas Area Chapter ("SIM-DFW"), a Texas non-profit corporation, Janis O'Bryan, an individual, and Nellson Burns, an individual.

In the trial court the appellees/defendants were represented by the following attorneys:

Robert A. Bragalone
Soña J. Garcia
GORDON REES SCULLY MANSUKHANI, LLP
2200 Ross Avenue, Suite 4100 West
Dallas, Texas 75201-2708
214-231-4660 (Telephone)
214-461-4053 (Facsimile)

Peter S. Vogel
FOLEY GARDERE
FOLEY & LARDNER LLP
2021 McKinney Ave. Ste. 1600
Dallas, Texas 75201
214-999-3000 (Telephone)
214-999-4667 (Facsimile)

Appellees/Defendants are represented by the same attorneys in this appeal.[1]

Peter Beasley

In the trial court, the appellant/plaintiff was represented at various times by the following persons. At the time the trial court dismissed appellant/plaintiff's

[1] Appellees were also represented by the same counsel in *Beasley v. Society of Information Management, et al.,* Cause No. DC-16-03141, in the 162nd Judicial District Court of Dallas County, Texas appealed in *Beasley v. Society of Information Management et al.,* 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018), petition for review pending, Cause No. 19-0041.

EXHIBIT B EXHIBIT A

claims he was represented by Ms. Daena Ramsey and Mr. Andrew Gardner. Appellant/Plaintiff is unrepresented on appeal and proceeds *pro se*.

Peter Beasley, *pro se*
P.O. Box 831359
Richardson, TX 75083-1359
(972) 365-1170

R. Rogge Dunn
John M. Lunch
ROGGE DUNN GROUP, PC
1201 Elm Street, Suite 5200
Dallas, Texas 75201
(214) 888-5000

Daena Ramsey
Andrew Gardner
VAUGHN & RAMSEY
2000 E. Lamar Blvd., Suite 430
Arlington, TX
(972) 262-0800

TABLE OF CONTENTS

EXHIBIT B EXHIBIT A

TABLE OF AUTHORITIES

Cases

EXHIBIT B EXHIBIT A

Statutes

Rules

EXHIBIT B EXHIBIT A

I.
STATEMENT OF THE CASE

Appellant Peter Beasley originally filed his claims against SIM-DFW on March 17, 2016 as Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas ("Original Case").[2] The parties litigated the Original Case for 18 months when, on the eve of Defendant SIM-DFW's Motion for Summary Judgment, and the due date for his response, Beasley nonsuited without prejudice his claims and those of his company, Netwatch Solutions, on October 5, 2016.[3]

The case on appeal was filed November 30, 2017 ("2017 Case") in Collin County, Texas, alleging claims that all arose out of the same circumstances alleged by Beasley's Original Case. The 2017 Case was transferred to Dallas County following Appellees' Motion to Transfer Venue.[4]

Appellees moved to declare Beasley a vexatious litigant on April 19, 2018.[5] The trial court heard Appellees' motion on September 20, 2018 and on December 11, 2018 issued an order finding that Beasley is a vexatious litigant within

---

[2] This Court may take judicial notice of the proceedings styled *Beasley v. Society of Information Management, et al.,* Cause No. DC-16-03141, in the 162nd Judicial District Court of Dallas County, Texas appealed in *Beasley v. Society of Information Management et al.,* 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018), petition for review pending, Cause No. 19-0041.

[3] *Id.*

[4] CR 661-662.

[5] CR 663-989; 1001-1056.

the meaning of TEX. CIV. PRAC. & REM. CODE § 11.054.[6] The December 11, 2018 order included the language pursuant to § 11.101 prohibiting Beasley from *pro se* filing new litigation without permission from the appropriate local administrative judge.[7] Beasley is listed on the Texas Office of Court Administration List of Vexatious Litigants Subject to Prefiling Orders.

While Beasley has filed multiple notices of appeal, his initial notice was a notice of *interlocutory* appeal, filed May 21, 2019.[8] The *second* notice of appeal was filed May 27, 2019.[9] An *amended* notice of appeal was also filed July 16, 2019[10] and a *final amended notice of partial appeal* filed on August 22, 2019.[11] Beasley refers to the December 11, 2018 order as the "prefiling order" which he claims is the sole basis of this appeal. However, the December 11, 2018 was an interlocutory order and this appeal is untimely.

II.
STATEMENT REGARDING ORAL ARGUMENT

The issues in this appeal are neither novel nor complex. First, the interlocutory appeal is untimely and mooted by the trial court's final judgment.

---

[6] CR 1259-1260.

[7] *Id.*

[8] CR 1342-1344.

[9] CR 1345.

[10] 2019 10 07 Supp CR Vol 1 155-159; *see also* 2nd Supp CR 23 (docket entry)

[11] 2nd Supp CR 307-309.

If this Court is inclined to construe this appeal as an appeal of the final judgment, the law and the record clearly support the trial court's determination that Appellant is a vexatious litigant as that term is defined by TEX. CIV. PRAC. & REM. CODE § 11.054, and is the appropriate subject of a prefiling order pursuant to TEX. CIV. PRAC. & REM. CODE § 11.101. As a result, Appellee does not request oral argument.

III.
STATEMENT OF ISSUES PRESENTED

- The *pro se* Appellant's failure to timely file a notice of interlocutory appeal requires this Court to dismiss this appeal.
- If this Court allows Appellant's untimely appeal to move forward, the Appellant has failed to establish that the trial court abused its discretion in granting Appellees' motion to declare Appellant vexatious.
- Appellee's motion to declare appellant vexatious was timely.
- Appellant is vexatious. There was no reasonable probability that Appellant would prevail on any of his claims against Appellees. Appellees easily established that Appellant's litigation history met Chapter 11's numerosity requirement.
- The Vexatious Litigant Statute is constitutional.
- Appellant's incredible attack on the judiciary of Dallas County is wholly unsupported and demonstrates well his vexatious behavior.
- Chapter 11 imposes a mandatory stay of trial proceedings when a vexatious litigant motion is filed. Only *after* a motion is denied or, if granted, the vexatious litigant has paid the court-ordered security, may the trial court resume proceedings.

IV.
STATEMENT OF FACTS

A. Beasley Sues SIM-DFW, Nonsuits on the Eve of Summary Judgment, and Then Sues SIM-DFW Again.

The Society for Information Management is a national, professional society of Information Technology ("IT") leaders whose goal is to connect senior level IT leaders with peers in their communities, to provide opportunities for collaboration to share knowledge, provide networks, give back to local communities, and provide its members with opportunities for professional development. Locally, Appellee is known as SIM-DFW and is one of the largest chapters in the organization, with more than 300 members. SIM-DFW meets most months to network and discuss important managerial and technical issues facing IT practitioners. Beasley was a member of SIM-DFW until April 2016 when he was expelled from the Chapter by vote of the Board of the Directors.

1. The Original Case and Award of $211,032.02 in Attorneys' Fees to SIM-DFW.

Before expelling Beasley, the Executive Committee planned to seek his resignation. However, before the Executive Committee was able to seek his resignation, Beasley sued both his own organization and the volunteers who donate their time to sit on its Board of Directors.

During the Original Case, Beasley amended his claims multiple times. In the Sixth Amended Petition, Beasley added several declaratory judgment act claims

alleging that (1) the April 19, 2016 expulsion meeting was void because it violated the Texas Business Organizations Code; (2) the actions taken by the SIM-DFW Board following the April 19, 2016 meeting were invalid absent Beasley's ratification; and, (3) SIM-DFW was prohibited from using member funds to benefit non-members. Beasley also alleged that his due process rights were violated because SIM-DFW did not provide him with due process related to his expulsion.

SIM-DFW filed a motion for summary judgment arguing that the doctrine of judicial non-intervention required dismissal of all of Beasley's claims, with the hearing set for October 12, 2017. Beasley nonsuited all of his claims on October 5, 2017, the date his response to SIM-DFW's motion for summary judgment was due.

After the nonsuit, SIM-DFW moved for, and was declared, the prevailing party on Beasley's declaratory judgment act claims.[12] SIM-DFW was awarded $211,032.02 in attorneys' fees for the defense of the declaratory judgment act claims.[13] Beasley filed multiple post-judgment motions, seeking recusal of the judge,[14] mandamus in both the Fifth Court of Appeals and the Texas Supreme

[12] CR 22-26.

[13] CR 214-216.

[14] CR 23-26; 217-523.

Court,[15] and all manner of post-judgment relief.[16] Eventually, Beasley appealed the award of attorneys' fees.[17] The Fifth Court of Appeals affirmed the award.[18] Beasley then petitioned the Texas Supreme Court for review.

2. Beasley's 2017 Case, Appellee's Motion to Transfer Venue, and Return to Dallas County.

At the same time he was seeking review of the attorneys' fees award, Beasley filed a nearly identical case against SIM-DFW and Appellees Janis O'Bryan and Nellson Burns in Collin County, i.e., the 2017 Case.[19] Appellees first moved to transfer venue, arguing that Beasley was engaging in forum-shopping and that proper venue for the 2017 Case was Dallas County.[20] Thereafter, on January 22, 2018, Appellees filed their Original Answer, General Denial, and Affirmative Defenses subject to the Motion to Transfer Venue.[21]

---

[15] CR 23-26; 217-523.

[16] *Id.*

[17] CR 769-886.

[18] *Beasley v. Society of Information Management et al.*, 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018).

[19] 2019 10 07 Supp. CR Vol. 1 4-19.

[20] CR 22-628.

[21] 2019 10 07 Supp. CR Vol. 1 20-23; *see also* CR 7 (docket sheet noting filing on January 22, 2018); *see also* CR 991 (Collin County docket sheet).

B. The Timely Filed Vexatious Litigant Motion Stays Litigation and Beasley is Found Vexatious.

The Collin County District Court transferred the 2017 Case back to Dallas County in April 2018.[22] On April 19, 2018, when the 2017 Case was in the process of being transferred to Dallas County, Appellees filed a Motion to Declare Peter Beasley a Vexatious Litigant.[23] The Vexatious Litigant Motion was filed three (3) days before the expiration of the filing deadline contained in TEX. CIV. PRAC. & REM. CODE § 11.051.[24] In error, Beasley disputes the timeliness of the filing.

By statute, the filing of the vexatious litigant motion **stayed all litigation activity**. TEX. CIV. PRAC. & REM. CODE § 11.052. Appellees' Vexatious Motion was heard on September 20, 2018.[25] Beasley was represented by counsel at this hearing.[26] Beasley's counsel even requested an opportunity to provide post-hearing briefing, which was granted.[27] Counsel did not request that Beasley testify in his own defense, did not demand rulings on his objections, and did not present any witnesses on behalf of Beasley.[28] Appellees' counsel provided evidence and

---

[22] CR 661-662.

[23] CR 663-989.

[24] CR 663-664.

[25] RR Vol. 1.

[26] RR Vol. 1 at p. 2.

[27] RR Vol 1, 11:23-12:12; 79:18-88:9.

[28] Beasley's assertion that Appellee's Janis O'Bryan and Nellson Burns were subpoenaed to testify at the vexatious litigant hearing is false. Brief at 13-14. O'Bryan and Nellson were subpoenaed

argument establishing that Beasley had no reasonable probability to prevail on his claims against Appellees. Appellees also provided the trial court with evidence proving that Beasley's vexatious behavior more than meets the numerosity requirements of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) and (B). Following the hearing, the Court accepted letter briefs from both parties regarding (1) the timeliness of Appellants' Vexatious Litigant Motion and (2) Beasley's Reasonable Probability of Success on the Merits.[29]

V.
SUMMARY OF ARGUMENT

Appellant's own brief confirms that Peter Beasley is a vexatious litigant. Beasley, an experienced *pro se* litigant who is no stranger to the Courts of Dallas County and the Fifth Court of Appeals, has repeatedly proven that the vexatious litigant statute absolutely applies to him.

Beasley's failure to timely appeal the December 11, 2018 interlocutory order should result in an immediate dismissal of this appeal. Moreover, Beasley has already filed another appeal that is also pending in the Fifth Court of Appeals[30] that he claims is the appeal of the trial court's final dismissal of his claims against

---

to appear as witnesses in Beasley's Rule 12 Motion hearing, which did not take place. RR Vol 1 78:20-79:17. This clarification of the subpoenas was unchallenged by Beasley's counsel.

[29] CR 1089-1258.

[30] Cause No. 05-19-01111-CV.

Appellees for his for failure to pay the security required by the December 11, 2018 order. Not surprisingly, Beasley has created a mess of his appeal(s) and continues to waste judicial resources.

If this Court allows this appeal to move forward at all, it must affirm the trial court. As this Court is well aware, a vexatious litigant declaration is reviewed on an abuse of discretion standard. *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex.App. – Dallas 2006, no pet.); *see also Forist v. Vanguard Underwriters Ins. Co.*, 141 S.W.3d 668, 670 (Tex. App. –San Antonio 2004, no pet.) (noting that while no other Texas courts has addressed the appropriate standard of review for CPRC Chapter 11 claims, "abuse of discretion" was the appropriate standard under Chapter 13 which is an analogous chapter in the Civil Practice and Remedies Code). Appellees' motion complied in *all respects* with the vexatious litigant statute. The vexatious litigant motion, filed less than 90 days after Appellee filed their original answer, was timely. Additionally, despite Beasley's attempts to argue to the contrary, neither Appellees' counterclaims nor their efforts to have this case timely transferred to the correct venue, prohibited them from availing themselves of the vexatious litigant statute.

All statutory requirements of TEX. CIV. PRAC. & REM. CODE § 11.054 are met.[31] The trial court found that Beasley had no reasonable probability of prevailing

[31] Appx. 3-4.

on his claims. The core claims were all subject to the doctrine of judicial non-intervention. The remaining claims all suffered from fatal flaws including lack of contract (or unilateral contract) for the breach of contract-based claims, judicial immunity for the defamation claims, and/or evidence that the claims as pled did not belong to Beasley at all but were instead claims that, if they were meritorious at all, belonged to Beasley's company, not Beasley himself. But of course, those claims were not meritorious, which was clearly understood by the trial court.

The remainder of Beasley's arguments on appeal do not merit a response, but Appellees most decidedly did **not** nonsuit their vexatious litigant motion by nonsuiting their counterclaims. That assertion is preposterous and exactly the type of argument that Beasley has made frequently and repeatedly in this four-year litigation. Additionally, as Beasley should know, the vexatious litigant statute's automatic stay, not some vast conspiracy between judges and lawyers in Dallas County, is what prevented Beasley from having any of his post-declaration motions heard.

This appeal represents a virtual "greatest hits" of the types of arguments Beasley has lodged over the years in his crusade against SIM-DFW. His statutory interpretation is unsupported by case law and prior rulings in the trial court. His reimagining of facts, even those established by clear records and evidence, is unparalleled nonsense. And his waste of resources of his opponents is the perfect

example of why Texas has the vexatious litigant designation. There is no basis to reverse the trial court's determination that Beasley is a vexatious litigant. This Court must affirm.

VI.
ARGUMENT & AUTHORITIES

> Some litigants abuse the Texas court system by systematically filing lawsuits with little or no merit. This practice clogs the courts with repetitious or groundless cases, delays the hearing of legitimate disputes, wastes taxpayer dollars, and requires defendants to spend money on legal fees to defend against groundless lawsuits.

House Committee on Civil Practices, Bill Analysis, Tex. H.B. 3087, 75th Leg., R.S. (1997).

Peter Beasley is the epitome of a vexatious litigant. The trial court easily recognized this fact and this Court should affirm the trial court's order finding Beasley vexatious and placing him on the Office of Court Administration's prefiling list.

A. Beasley's Interlocutory Appeal Should be Summarily Dismissed As Untimely.

TEX. CIV. PRAC. & REM. CODE § 11.101(c) states that a litigant may appeal from a prefiling order entered under TEX. CIV. PRAC. & REM. CODE § 11.101(a).[32] Notwithstanding the permission for interlocutory appeal granted by the Texas Civil

[32] Appx. 5.

Practices & Remedies Code for a prefiling order, a litigant must comply with the Texas Rules of Appellate Procedure to perfect the accelerated appeal. TEX. R. APP. P. 28.1(b). Beasley's initial notice of appeal of the prefiling order was filed May 21, 2019 — 161 days *after* the order was signed.

Beasley's deadline to perfect the appeal of the prefiling order was 20 days after the order was signed. TEX. R. APP. P. 26.1(b). The prefiling order was signed December 11, 2018.[33] Of course, the appellate court *may* extend the time to file a notice of appeal if, within 15 days after the deadline to file such a notice, the party seeking appeal files a notice of appeal in the trial court and motion to extend time in the appellate court. TEX. R. APP. P. 26.3; TEX. R. APP. P. 10.5(b). Beasley failed to do so. He did not file a notice of appeal of the prefiling order within 20 days of December 11, 2018. Nor did he file a notice and motion to extend within the 15 additional days that might have been available to him pursuant to TEX. R. APP. P. 26.3. Accordingly, his appeal is untimely and should be dismissed and the trial court's order affirmed on this basis alone.

B. Appellees' Vexatious Litigant Motion was Timely Filed.

TEXAS CIVIL PRACTICE & REMEDIES CODE § 11.051 provides:

> In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant **files the original answer or makes a special appearance**, move the court for an order: (1) determining that

[33] CR 1259-1260.

> the plaintiff is a vexatious litigant; and (2) requiring the plaintiff to furnish security.

(Emphasis added).[34]

Appellees filed the Motion to Transfer Venue on January 16, 2018 and, on January 22, 2018, answered subject to the venue motion.[35] The Motion to Declare Peter Beasley a Vexatious litigant was filed **87 days** after the Answer, on April 19, 2018, in Collin County due to the pending transfer of the case from Collin County to Dallas County.[36] The deadline was met with **three** days to spare.

Beasley erroneously argues that TEX. R. CIV. P. 85 — which speaks only to the ***contents*** of original answers — provides that a venue motion is an "answer" within the meaning of CPRC § 11.051. Once again, Beasley is wrong. The plain language of Rule 85 states only that "[t]he original answer ***may consist of*** motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel, and it may present a cross-action…." (Emphasis added). The Rule says nothing that even possibly could be construed as declaring that a motion to transfer venue is the same thing as an original answer for purposes of the vexatious statute. While a venue motion may be part of an answer, it is not tantamount to an answer

[34] Appx. 2.

[35] CR 7 (docket sheet noting filing date of Appellees' Motion to Transfer Venue and Answer).

[36] CR 10.

for purposes of starting the 90-day period running in which to file a vexatious motion.

Moreover, Rule 86(1) includes a "due order of pleading" requirement that states explicitly that a motion to transfer venue is waived unless it is filed "**prior to or concurrently with** any other plea, pleading or motion ***except*** a special appearance motion provided for in Rule 120a." (Emphasis added). A plain reading of the Rule confirms that a motion to transfer venue must be filed before or with an answer, **not that filing a motion to transfer venue *is* an answer**.

Beasley's attorneys' advanced this same argument in the trial court and lost. The court rejected his tortured reading of Rule 85 and determined that the Appellee's Motion was timely filed. This Court should do likewise.

C. Appellee's Right to Invoke the Vexatious Litigant Statute is Not Altered by the Transfer of the 2017 Case from Collin to Dallas County or Appellee's Counterclaims.

One of Beasley's more unusually frivolous arguments is that by moving to transfer the 2017 Case from Collin County to Dallas County, Appellees became "plaintiffs" within the meaning of Chapter 11 and therefore were ineligible to seek a declaration that Beasley was vexatious. Beasley makes the same argument with regard to Appellees status in the trial court as counter-claimants. Not surprisingly there is no authority whatsoever for this position.

The statute defines "defendant" as "a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation." TEX. CIV. PRAC. & REM. CODE § 11.001(1).[37] Beasley acknowledges in his Statement of the Case that he filed "Breach of Contract, Fraudulent Inducement, Defamation, Tortuous (sic) Interference, Declaratory Judgment, Due Process, and Injunctive causes of action" against Appellees.[38] There is no question that Appellees are "defendants" within the meaning of Chapter 11.

Missing from Beasley's argument is the candor regarding the interplay between Appellees' Motion to Transfer Venue, the Collin County court's order on the Motion, and the timing of the transfer vis-a-vis the deadline to file the vexatious litigant motion. Simply put, in the midst of chaos that Beasley was busy creating by filing the 2017 Case in Collin County, Appellees did what was necessary to expedite the transfer of the 2017 Case to allow them to timely file the vexatious litigant motion.

The hearing on Defendants' Motion to Transfer Venue was held on April 3, 2018 and granted the same day.[39] The Collin County court then signed an Amended Order on the Motion to Transfer Venue on April 18, 2018 expediting the

---

[37] Appx. 1.

[38] Brief at 1; *see also* CR 629-648.

[39] CR 661.

transfer to Dallas County.[40] On receipt of that Amended Order, and confirmation that the case transfer was imminent, Defendants filed the Motion to Declare Peter Beasley a Vexatious Litigant (in both Collin and Dallas County) and caused to be paid the transfer fees associated with the transfer to ensure that the vexatious litigant motion was duly filed.[41] While perhaps unconventional, time was of the essence, and Beasley's attempt to run out the clock on Appellees ability to file a vexatious litigant motion was not going to be rewarded. After what was then two long years of litigating with Beasley, and traversing state and federal courts in Dallas and Collin Counties, Appellees were ready to, and were entitled to, avail themselves of the protections offered by Chapter 11.

D. The Trial Court's Order Declaring Beasley Vexatious is Proper in All Respects.

Beasley complains that the Court's December 11, 2018 order fails to state the specific findings of the trial court in declaring Beasley vexatious. Beasley claims that this failure renders the vexatious order "insufficient". There is no required form of order for an order declaring a *pro se* party to be vexatious.

Simply put, the trial court finds that the statutory elements of Chapter 11 are met, as the trial court did here.[42] Beasley provides this Court with no authority,

[40] CR 662.

[41] CR 1354-1355.

[42] CR 1259.

because there is none, that holds that a trial court is required to exhaustively restate, either on the record or in the order, the grounds for granting a vexatious litigant motion. Moreover, Beasley's argument that he was entitled to findings of fact and conclusions of law is also incorrect. In fact, TEX. R. CIV. P. 296 only requires the trial court to issue findings of fact and conclusions of law after a bench trial. Requiring the trial court to issue findings of fact and conclusions of law after every hearing, as requested by Beasley, would unnecessarily burden the courts — a request that, tragically, is par for the course for this particular vexatious litigant.[43]

What Beasley must show, which he cannot, is that the trial court was not presented with any evidence by the Appellees that was sufficient to meet the statutory burden of Chapter 11. As well demonstrated during the hearing on September 20, 2018, and in the post-hearing briefing allowed by the trial court, Appellees provided this Court with ample evidence of Beasley's vexatious litigant behavior, including:

- Evidence of **seven** (not just the five required) cases filed in the 7 years immediately preceding the filing of Appellee's motion that were either determined adversely to Beasley, TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) or "permitted to remain pending at least two years without having been brought to trial or hearing", TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B);

[43] Significantly, a trial court is not required to prepare and file findings of fact and conclusions of law in an appeal from an interlocutory order. Tex. R. App. P. 28.1(c); *Pinnacle Premier Props., Inc., v. Breton*, 447 S.W.3d 558, 562, n6 (Tex.App.—Houston [14th Dist.] 2014, no pet.).

- Evidence and legal argument confirming the frivolous and unmeritorious nature of Beasley's pending claims sufficient to support the trial court's finding that Plaintiff had no reasonable probability of success of prevailing; and,

- Argument and legal authority confirming that Appellees' motion to declare Beasley vexatious was timely filed.

The Order declaring Beasley vexatious is not void for any of the reasons argued by Beasley.

1. The Vexatious Litigant Statute's Numerosity Requirement is Easily Established by the Record Evidence.

This Court is well familiar with the requirements of Chapter 11. They require the movant to prove that the plaintiff had, in the seven-year (7) period immediately preceding the date the defendant makes the motion under Section 11.051, commenced, prosecuted or maintained **at least five litigations** as a *pro se* litigant other than in small claims court that have been (A) finally adversely determined to the plaintiff, **or** (B) permitted to remain pending at least two years without having been brought to trial or hearing.[44]

At the September 20, 2018 hearing Appellees introduced into evidence the **six (6) litigations** commenced, prosecuted or maintained by Plaintiff Beasley that had been finally adversely determined against him:

[44] Section 11.054(1)(C) provides an additional grounds for determining a plaintiff is vexatious. It is not necessarily an issue here, though at least one court confirmed that Beasley's claims were frivolous. September 3, 2019 RR Exhibits, Defendants' Exhibit 1 and p.2. *See also*, Appx. 3.

1. ***Peter Beasley v. Susan M. Coleman; Randall C. Romei,*** Case No. 1:13cv1718 in the USDC Northern District of Illinois;[45]

2. ***Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.***, Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas;[46]

3. ***Peter Beasley v. Seabrum Richardson and Lamont Aldridge***, No. 05-15001156-CV, Texas Fifth Court of Appeals;[47]

4. ***In re: Peter Beasley***, Cause No. 05-15-00276, Texas Fifth Court of Appeals;[48]

5. ***In re: Peter Beasley***, Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals;[49]

6. ***In re: Peter Beasley***, Cause No. 05-17-1032, Texas Supreme Court.[50]

Appellees also argued that a ***seventh case***, *Peter Beasley v. Society for Information Management*, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, met the requirements of § 11.054(1)(B), not § 11.054(1)(A). This case should also be counted for numerosity purposes.[51] Beasley argues that this case cannot count against the numerosity requirement because (1) it is still on appeal

[45] September 3, 2019 RR Exhibits, Defendants' Exhibit 1.

[46] *Id.*, Defendants' Exhibit 2.

[47] *Id.*, Defendants' Exhibit 3.

[48] *Id.*, Defendants' Exhibit 4.

[49] *Id.*, Defendants' Exhibit 5.

[50] *Id.*, Defendants' Exhibit 6.

[51] RR Vol. 1 33:18-35:15.

and (2) he was represented when the case was dismissed at the trial court level. Beasley incorrectly argues that either of those things makes this seventh case ineligible to be counted when applying the numerosity standard. First, § 11.054(1)(B) is a different means of determining whether a case counts for numerosity purposes and does not require a final adverse determination, only that the case has not come to trial or hearing within two years.[52] Second, the statute clearly contemplates that a *pro se* party may eventually become represented or be represented and lose counsel by using the "commenced, prosecuted or maintained" language to describe the litigation at issue for the numerosity requirement. *See, Drake v. Andrews,* 294 S.W.3d 370, 374-75 (Tex. App.—Dallas 2009, no pet.) (holding that the vexatious litigant statute is not limited to just pro se litigants, "[t]o interpret the statute in such a way as to immunize Drake from its effect, simply because Drake was briefly represented by counsel, would be to thwart the statute's purpose."). Beasley cannot credibly dispute that he commenced, prosecuted, and maintained this seventh litigation as a *pro se.*

At the September 20, 2018 hearing, and in the post-hearing briefing, Beasley's counsel did not object to the accuracy of *any* of the evidence provided to the Court proving the adjudication of the six litigations determined adversely against Peter Beasley. Moreover, Beasley's counsel at the September 20, 2018 hearing went so

[52] Appx. 3.

far as to **concede** that mandamus or original proceedings counted as "litigations" for purposes of the statute separate from the underlying case upon which mandamus was sought.

On appeal, Beasley now challenges the authenticity of the court records provided by the Appellees in the trial court. His reliance on Texas Rule of Evidence 202(b)(2) to support his argument is misplaced. Rule 202(b)(2) addresses the admissibility of the law of other states and does not apply to the admissibility of court documents.

Beasley's citation to *Southern Cnt'y Mut. Ins. v. Ochoa* has some relevance, though in fact *Ochoa* supports Appellees here. 19 S.W.3d 452 (Tex.App—Corpus Christi 2000, no pet). *Ochoa* stands for the unremarkable proposition that a court cannot take a lawyer's word about the existence of orders from another court; rather, the party seeking judicial notice of the orders of another court need provide the trial court with proof of the orders. *Id.* at 463. The appellate court in *Ochoa* went on to note that the party urging judicial notice of another court's order failed to direct the court of appeals to a copy of the order in the appellate record and failed to describe the orders in any detail at the hearing. *Id.*

Here, in stark contrast, the Appellees supplied the Court with copies of all of the orders finally adjudicating Beasley's prior litigations, described each in great

detail on the record[53] and, the orders themselves were admitted as evidence by the trial court as self-authenticating documents under Tex. R. Evid. 902(5). *See Williams Farms Produce Sales, Inc. v. R&G Produce Co.*, 443 S.W.3d 250, 259 (Tex.App—Corpus Christi 2014, no pet. h.) (holding that documents from government websites are self-authenticating under Tex. R. Evid. 902(5), and further, that documents that originate from document websites can also be authenticated under Tex. R. Evid. 901(b)(4)). Moreover, while Beasley's attorney did object to the authenticity of the documents establishing Beasley's prior litigation history,[54] counsel failed to secure or even request a ruling on his objection and therefore failed to preserve error. Tex. R. App. P 33.1(a)(2).

Last, Beasley's reliance on *Gardner v. Martin*, 354 S.W.2d 274 (Tex.1961), and *Soefje v. Jones*, 270 S.W.3d 617 (Tex.App.—San Antonio 2008, no pet.) is easily rebutted. The court in *Gardner* merely held that a party moving for traditional summary judgment and relying on records of a prior case to establish *res judicata* must provide those records of the prior case to the trial court and could not incorporate court records by reference. 354 S.W.2d at 276. In *Soefje*, the court did not exclusively hold, as Beasley claims, that only certified or sworn documents from other cases are admissible. Instead, the *Soefje* court noted the general rule that a trial

[53] RR Vol 1, 28:16-36:12.

[54] RR Vol. 1, 56:22-57:1.

court may not take judicial notice of documents from another case unless they are properly authenticated. 270 S.W.3d 617, 625 ("It is also generally true that pleadings are not summary judgment evidence and that simply attaching a document to a pleading does not make the document admissible as evidence or dispense with proper foundational requirements."). Here, as demonstrated in the record, the court orders of Beasley's prior cases all were authenticated.

It is notable that Beasley's counsel did not raise the issue of the authenticity of the evidence submitted in the post-trial briefing. Presumably, this is because Beasley's counsel knew that the records were, in fact, authentic and accurately represented Beasley's notorious *pro se* history.

2. Six of the Seven Adjudications Accepted by the Trial Court as Evidence of Beasley's Vexatious Nature were Determined Adversely, and the Seventh Counts for Numerosity Purposes Under a Different Part of the Statute.

Beasley continues to argue that Appellees' evidence failed to prove the clear adverse determinations that are visible on the very face of each document.

Inexplicably, he argued that *Peter Beasley v. Susan M. Coleman; Randall C. Romei,* Case No. 1:13cv1718 in the USDC Northern District of Illinois [55] and *Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.,* Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas[56]

[55] September 3, 2019 RR Exhibits, Defendants' Exhibit 1

[56] September 3, 2019 RR Exhibits, Defendants' Exhibit 2

should not count for purposes of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) because, while the cases brought *pro se* by Peter Beasley were dismissed, they were dismissed on jurisdictional grounds.[57] Beasley's argument is that a dismissal for improper venue or lack of jurisdiction does not meet the statute's requirement that a litigation be "finally determined adversely." As an initial matter, Beasley's argument misstates the facts. As demonstrated by the records contained in Defendants' Exhibit 1, Defendant Romei's Motion to Dismiss was granted because the Court did not believe supplemental jurisdiction existed. But Peter Beasley's claim against Defendant Susan Coleman was dismissed on the grounds that it was filed frivolously, which is one of the specific numerosity grounds under TEX. CIV. PRAC. & REM. CODE § 11.054(1)(C).[58]

Beyond Beasley's misrepresentation of the Illinois case, he cites no case law for the proposition that "adverse determinations" must mean only merits-based adjudications. He provides the Court with no guidance from either legislative history or analogous statutes to argue that dismissals for improper venue and lack of jurisdiction do not count for purposes of the vexatious litigant statute. But this Court need only consider the ***purpose*** of the vexatious litigant statute to know that Beasley's argument is utter nonsense.

---

[57] Brief at p.36.

[58] Appx. 3.

In *Cooper v. McNulty*, the Dallas Court of Appeals stated "Chapter 11 of the Texas Civil Practice and Remedies Code addresses vexatious litigants — persons who abuse the legal system by filing numerous, frivolous lawsuits." 2016 Tex.App. LEXIS 11333, *6 (Tex.App.—Dallas, October 19, 2016, r'hrg. denied, r'hrg. en banc denied). The Court went further, clarifying that the statute is meant to "strike a balance between Texans' right of access to their courts and the public interest in protecting defendants form those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Id.* at *11. **The clear intent of the statute is to operate as a check and balance on *pro se* litigants who would file frivolous, meritless, or simply improper claims that waste judicial resources.** Given that backdrop, it is inconceivable that the statute would find that lawsuits filed in improper venues or in forums that lack jurisdiction are not a significant waste of judicial resources.

As both Defendants' Exhibits 1 and 2 show, significant judicial resources were expended in both cases. In the *Coleman* matter, (Defendants' Exhibit 1), a hearing on Defendant Romei's Motion to Dismiss was held and then after the Motion to Dismiss was granted (and the claims against Coleman were dismissed because they were frivolous), Peter Beasley then ***appealed that decision to the United States Seventh Circuit Court of Appeals!*** The appeal was decided in February 2014, but, at or around the same time Beasley presumably was briefing his

EXHIBIT B EXHIBIT A

Seventh Circuit appeal, he filed a case involving the same facts and circumstances in the United States District Court for the Northern District of Texas –the *Krafcisin* case (Defendants' Exhibit 2).

The *Krafcisin* defendants filed motions to dismiss under Fed. R. Civ. P. 12 (b)(1), (2), (3), and (6) in early January 2014 and Magistrate Judge Stickney provided his Findings, Conclusions, and Recommendations for dismissal on August 25, 2014. (Defendants' Exhibit 2). Beasley next filed **objections** to the Magistrate's Findings, Conclusions, and Recommendations and then filed amended objections. Further amendments to the objections were prevented by Judge Lynn's September 17, 2014 Order accepting the Magistrate Judge's findings.[59] Not surprisingly, the docket indicates that Beasley attempted an appeal to the Fifth Circuit Court of Appeals.[60]

It is absurd to suggest, as Beasley does, that this colossal waste of judicial resources that involved two United States District Courts and one United States Court of Appeals would not count for purposes of § 11.054(1)(a). Both cases clearly count and Beasley's objections are without merit.

---

[59] This Court may take judicial notice of the docket sheet of the Federal Court case in *Beasley v. Krafcisin et al.,* Cause No. 3:13-cv-04972-M-BF.

[60] *Id.*

Next, Beasley argues that *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, No. 05-15001156-CV, (5th Court of Appeals) should not count because it was a voluntary nonsuit. Here, he again misstates the facts. It was a dismissal with prejudice that was entered at the request of Beasley that was then appealed ***by Beasley*** and affirmed by the Fifth Court of Appeals.[61]

Beasley similarly complains that *Peter Beasley v. Society for Information Management*,[62] i.e., the Original Case, cannot count against him because he voluntarily nonsuited this case as well. But as argued in the trial court, Appellees presented this case to the court because Beasley's failure to bring this case to trial within two years is the reason that this one counts and meets the requirements of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B).

Finally, Beasley complains that the remainder of the cases presented to the trial court do not count as adverse determinations because they were original proceedings which did not finally determine any issue in the underlying proceeding.[63] This argument is absurd on its face. Mandamus is a petition for extraordinary relief seeking to have a higher court command a lower court to do or refrain from doing some act. *See Seagraves v. Green*, 288 S.W. 417, 424-25

[61] September 3, 2019 RR Exhibits, Defendants' Exhibit 3.

[62] September 3, 2019 RR Exhibits, Defendants' Exhibit 5.

[63] Brief at 37.

(Tex.1926). In order for mandamus to issue, the relator must show that there is no adequate remedy by appeal. *In re Prudential*, 148 S.W.3d 124, 135-36 (Tex.2004). To suggest, as Beasley does, that only mandamuses related to underlying litigation that also is determined adversely to the plaintiff count for purposes of Chapter 11 suggests that mandamuses create no additional burden on the judicial system and are merely an option for all litigants to use and abuse subject to the adverse determination of the underlying case. Not surprisingly, Beasley provides no case law supporting this irrational proposition.

Moreover, Beasley simply sidesteps the nature of the three mandamus actions that count for purposes of numerosity. *In re: Peter Beasley*, Cause No. 05-15-00276[64] involved an issue related to deemed admissions. However, this mandamus was taken in the very same case discussed above where Beasley voluntarily dismissed his case with prejudice and then, incredibly, appealed his own voluntary dismissal. *Peter Beasley v. Seabrum Richardson and Lamon Aldridge*, No. 05-15001156-CV (5th District).

In the two mandamuses taken from the Original Case, *In re Peter Beasley,* Cause No. 05-17-01365[65] and 05-17-1032[66], Beasley sought mandamus to have the

[64] September 3, 2019 RR Exhibits, Defendants' Exhibit 4.

[65] September 3, 2019 RR Exhibits, Defendants' Exhibit 6.

[66] September 3, 2019 RR Exhibits, Defendants' Exhibit 7.

Fifth Court of Appeals and the Texas Supreme Court reverse the November 3, 2017 award of attorneys' fees and the November 22, 2017 order denying Plaintiff's motion to disqualify and recuse the trial judge. Both mandamuses were denied and Beasley continues to pursue reversal of the attorney's fees award by appeal. In both instances, his mandamus appeals represent the very type of waste of judicial resources that the vexatious litigant statute is designed to prevent.

"Litigation" is defined by the vexatious litigant statue as "a civil action commenced, maintained, or pending in any state or federal court." TEX. CIV. PRAC. & REM. CODE § 11.001(2).[67] The language of the statute plainly encompasses appeals. *Cooper v. McNulty*, 2016 Tex.App. LEXIS 11333, * 10 (Tex.App.—Dallas, October 19, 2016, r'hrg. denied, r'hrg. en banc denied) (holding that an original proceeding for writ of mandamus is a civil action within the meaning of the vexatious litigant statute). Beasley's argument that mandamuses do not count for purposes of the vexatious litigant statute is inconsistent with the language of the statute and current case law.[68]

[67] Appx. 1.

[68] Beasley's citation to *Goad v. Zuehl*, 2012 Tex.App. LEXIS 4066 (Tex.App.—San Antonio, May 23, 2012, no pet. h) is unpersuasive. In *Goad,* the court merely noted that an appeal cannot be counted separate from the underlying case for numerosity purposes. In *In re Florance*, 377 S.W.3d 837, 839 (Tex.App.—Dallas 2012, no pet. h.) the Dallas Court of Appeals clarified that the trial court lacks jurisdiction to hear and grant a post-judgment motion to declare a litigant vexatious.

Beasley's 2016 lawsuit against SIM-DFW, a.k.a. the Original Case counts for purposes of the vexatious litigant numerosity requirement under TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B). It is undisputed that the claims filed by Beasley in March 2016 had not been brought to trial or hearing before March 2018. Under § 11.054(1)(B), a claim commenced, prosecuted, or maintained by a *pro se* plaintiff that has not been brought to trial or hearing counts for purposes of the numerosity requirement.

3. Beasley Argues For the First Time On Appeal That He Was Not a *Pro Se* Litigant.

In rather surprising disregard for the judicial process, Beasley argues, for the first time on appeal and some 16 months after Appellees first filed the Motion to Declare Beasley Vexatious, that there is "no evidence" that he commenced, prosecuted, or maintained some of these litigations *pro se*.

1. ***Peter Beasley v. Susan M. Coleman; Randall C. Romei,*** Case No. 1:13cv1718 in the USDC Northern District of Illinois. The Seventh Circuit Order dismissing Beasley's appeal states in relevant part: "Peter Beasley, the former representative of an estate in ongoing probate proceeding, filed a civil-rights action on his own behalf against the Cook County Judge and his previous attorney." [69]

2. ***Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.,*** Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas. The Findings, Conclusions, and Recommendation of the United States Magistrate Judge for the United States District Court of the Northern District of Texas, Dallas Division

[69] September 3, 2019 RR Exhibits, Defendants' Exhibit 1.

state in relevant part: "The District Court referred this *pro se* civil action to the U.S. Magistrate Judge for pretrial management."[70]

3. ***Peter Beasley v. Seabrum Richardson and Lamont Aldridge***, No. 05-15001156-CV, Trial Court Cause No. DC-13-13433, Texas Fifth Court of Appeals. The Memorandum Opinion from Justices Lang, Myers, and Evans states in relevant part: "Although we construe pro se pleadings and brief liberaly, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with the applicable laws and rules of procedure."[71]

4. ***In re: Peter Beasley***, Cause No. 05-15-00276, Texas Fifth Court of Appeals.[72] This mandamus relates to the above-referenced case, *Beasley v. Richardson*. The vexatious litigant statute does not require that the pro se litigant remain pro se for the entirety of the proceedings.

5. ***In re: Peter Beasley*,** Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals.[73] Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates.

6. ***In re: Peter Beasley***, Cause No. 05-17-1032, Texas Supreme Court. Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates.[74]

Beasley clearly is a vexatious litigant. The record evidence establishes that in each of the litigations presented in the Motion, Beasley commenced, prosecuted, and/or maintained the litigations *pro se*.

---

[70] *Id.*, Defendants' Exhibit 2.

[71] *Id.*, Defendants' Exhibit 3.

[72] *Id.*, Defendants' Exhibit 4.

[73] *Id.*, Defendants' Exhibit 5.

[74] *Id.*, Defendants' Exhibit 6.

4. Beasley's Had No Reasonable Probability of Prevailing on His Claims Against Appellees in the Trial Court.

The crux of Beasley's claims against Appellees relate to his expulsion from SIM-DFW in April 2016. Beasley complained in the 2017 Case, as he did in the Original Case, that his removal from SIM-DFW was done without due process and in contravention of the Bylaws of the chapter. However, all of his claims that relate to his expulsion were subject to application of the doctrine of judicial nonintervention.[75]

The trial court received extensive briefing on this matter[76] and also heard extensive arguments at the vexatious motion hearing.[77] TEX. CIV. PRAC. & REM. CODE § 11.054[78] requires that the movant show there is no reasonable probability that the plaintiff will prevail in the litigation. The statute itself does not require any specific way that defendant must make that showing. The trial court may evaluate evidence, the record, and the procedural history to determine if there is a reasonable probability that Beasley would prevail.

---

[75] RR Vol. 1 36:14-38:19.

[76] CR 663-989.

[77] RR Vol. 1.

[78] Appx. 3.

(a) Beasley's Core Claims Were Adjudicated by the Original Case Declaration that SIM-DFW was the Prevailing Party.

Beasley's lawsuit focused heavily on his attempts to judicially overturn the decision of the Executive Committee to expel him. However, the trial court's November 3, 2017 Dallas County Judgment in the Original Case[79] declared SIM-DFW a prevailing party on Peter Beasley's declaratory judgment act claims, including the following claim:

> **Declaratory Relief – Expulsion of Beasley Void**. …Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIM's bylaws, violated due process protections under the Texas Constitution and violated applicable provisions of the Texas Business Organizations Code, such that Beasley's purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.[80]

SIM-DFW also prevailed on Beasley's other declaratory judgment act claims, including those seeking a declaration that (1) acts of the SIM-DFW Executive Committee since April 19, 2016 are void and (2) SIM-DFW's charitable giving and philanthropy violate SIM-DFW's bylaws and articles of incorporation.[81]

Beasley's claims as pled in the Collin County 2017 Case include the *same three* declaratory judgment act claims plus two more. He sought a declaration that both boards were illegally constituted and a declaration that, despite his expulsion,

---

[79] CR 214-216.

[80] CR 36-46, Plaintiff's Sixth Amended Petition at ¶ 20.

[81] *Id.* at ¶¶ 21-22.

he remains a duly-elected board member.[82] Both of the "new" declaratory judgment act claims are naturally subsumed by the Dallas County Judgment declaring SIM-DFW a prevailing party.

The Dallas County Judgment also mooted other portions of Beasley's 2017 Case, including the claims for:

- injunctive relief requesting the appointment of a receiver to manage SIM-DFW's operations (Count 4); [83]
- injunctive relief requesting reinstatement as a Board Member (Count 4);[84] and,
- violation of due process rights with regard to the April 2016 expulsion meeting (Count 7)[85]

Additionally, given the Dallas County Judgment's effect on the core issues raised in the 2017 Case, and the conclusive determination that the expulsion did not violate SIM-DFW's bylaws or due process concerns, Beasley's status as a non-member of SIM-DFW since April 2016 resolves his pending "Breach of Duties/Ultra Vires Acts" claim against Defendants O'Bryan and Burns as well. (Count 13).[86] Beasley asserted that he was presently a "member of SIM with

[82] CR 629-648, at ¶¶ 71(b) and 71(d).

[83] *Id.* at ¶¶ 64-67.

[84] *Id.*

[85] *Id.* at ¶¶ 73-77.

[86] *Id*.

standing" to assert a derivative claim against Defendants O'Bryan and Burns.[87] As a matter of law, there is no derivative claim for non-profit corporations. *Bridgewater v. Double Diamond-Delaware, Inc.* 2011 U.S. Dist. LEXIS 47248, *25 (N.D. Tex. April 29, 2011) (holding that the Texas Non-Profit Corporations Act does not provide a derivative suit mechanism against a non-profit by a non-profit's members). But even if there were such a claim, Beasley ***is not a member of SIM-DFW*** and has not been a member since April 2016, meaning he lacked standing to assert that claim.

(b) Beasley's Remaining Claims in the 2017 Case Also Were Subject to Summary Disposition and the Trial Court Correctly Determined that There was No Reasonable Probability of That Beasley Would Prevail on his Claims.

Beasley's remaining claims fall into three categories: (1) Breach of contract claims against SIM-DFW (Counts 1, 2, and 3); (2) Defamation and tortuous (sic) interference claims against SIM-DFW and its defense counsel (Counts 5, 8, 9, 10); and (3) claims of tortuous (sic) interference with contracts and business disparagement related to Peter Beasley's company, Netwatch (Counts 11 and 12). There was no reasonable probability Beasley would have prevailed on any of those claims.

The breach of contract type claims were based on Beasley's argument that a "Board Agreement", the bylaws, and unspecified oral representations from

[87] *Id.*, Count 13, at ¶¶ 102-106.

SIM-DFW established contractual obligations between SIM-DFW and Beasley to (1) allow him to resign if SIM-DFW believed he was not meeting his board duties and, (2) in the event Beasley became engaged in a legal dispute like the current one with SIM-DFW, allow him to rely on the SIM-DFW Officers & Director's Liability Insurance policy to cover his legal expenses. Testimony provided by Nellson Burns (and accepted as evidence by the trial court)[88] established that the Executive Committee considered seeking Peter Beasley's resignation from the Board both *prior* to and after the original lawsuit was filed. Even after its filing, the Board hoped that a compromise could be reached that would result in his resignation.[89] Ultimately, Beasley's unreasonable demands prevented any request for resignation and the Executive Committee was forced to seek expulsion.[90]

Next, his claims that SIM-DFW breached its contractual obligations and/or fraudulently induced Beasley to serve as a board member were preposterous. There is no reasonable probability that Beasley would have prevailed on that claim. Eventually, Beasley judicially admitted that the Hartford did provide coverage, which mooted his claim.[91]

---

[88] September 3, 2019 RR Exhibit, Defendants' Exhibit 22.

[89] *Id.* at 184:22-186:15.

[90] *Id.* at 184:22 -188:13.

[91] 2nd Supp. CR 140.

Beasley also claims that he paid membership dues in 2016 and was, as a result of his expulsion, unable to realize the benefits of membership.[92] Expulsion can be understood as the act of depriving someone of membership in an organization. Because the trial court in the Original Case previously declared that SIM-DFW prevailed on Beasley's claim that his expulsion was void and improper, it is axiomatic that the expulsion would deprive him of his membership benefits. That is what expulsion is — removing a member from the organization and the benefits of membership. There is no basis for this claim and given the resolution of the Original Case, no reasonable probability that Beasley would have prevailed on this claim.

> It did not help that the very contract he claims was breached was unsigned.[93]
>
> Bragalone: "So that's his breach of contract claim, it's not signed, it's not a contract. If it's been breached, it's breached by him, because he didn't resign."
>
> **The Court: "Okay. It's unilateral. I mean, in Texas you don't allow unilateral contracts – "**
>
> Bragalone: And there's no proximate cause, because this pertains to him as a board member. He was expelled as a member."
>
> **The Court: "Ok".**[94]

Beasley had no reasonable probability of success on his breach of contract claims.

---

[92] CR 639 at ¶ 62.

[93] RR Vol. 1 39:7-14.

[94] RR Vol. 1 40:19-41:2.

The defamation and tortuous (sic) interference claims were based *exclusively* on communications written by and transmitted by Appellees defense attorneys during the course of the litigation. First, as presented at the hearing on the vexatious litigant motion,[95] at least two of the claimed defamatory statements were determined by Judge Moore to be attorney-client communications. Secondly, the communications were made by the attorneys in the course of the litigation, and therefore were entitled to judicial immunity. Texas courts have recognized that an absolute privilege extends to publications made in the course of judicial and quasi-judicial proceedings — "meaning that any statement made in the trial of any case, by anyone, cannot constitute the basis for a defamation action, or any other action." *Hernandez v. Hayes*, 931 S.W.2d 648, 650 (Tex. App. –San Antonio 1996, writ denied) (*citing James v. Brown*, 637 S.W.2d 914, 916 (Tex. 1982) (per curiam); *Reagan v. Guardian Life Ins. Co.*, 140 Tex. 105, 166 S.W.2d 909, 912 (1942*)); Lane v. Port Terminal R.R. Ass'n*, 821 S.W.2d 623, 625 (Tex. App. –Houston [14th Dist.] 1991, writ denied) (same); *see Bird v. W.C.W.*, 868 S.W.2d 767, 771-72 (Tex. 1994). The statements made by Appellees lawyers are *per se* not defamatory and cannot support a claim for defamation. Beasley has no reasonable probability of success on this claim.

[95] RR Vol. 1 43:4-44:11.

With regard to the tortuous (sic) interference claim, Beasley believes that Appellee's counsel's communications with Beasley's attorneys over the course of the litigation — putting them on notice of SIM-DFW's intent to seek sanctions — was actionable tortious interference![96] This claim is entirely without merit. As argued extensively in the hearing on the vexatious motion,[97] the record is clear that on at least three instances Beasley terminated his attorneys.[98] There is no reasonable probability that Beasley would have prevailed on this claim and the trial court was correct to recognize it.

Beasley's only remaining claims are not his. They are those that properly belong to his company, Netwatch Solutions. In a clear and obvious attempt to avoid having to retain counsel, Beasley claimed he had standing to sue on behalf of his company because he is the sole owner. A corporation must sue on its own behalf for damages owed to it. Beasley conceded, under oath, that at least a portion of his claimed damages in the ongoing litigation were "really Netwatch's damages"[99] which proved he lacked both standing and capacity to sue on Netwatch's behalf.

Moreover, to the extent Beasley believes he still has a basis to assert that Appellee Nellson Burns tortiously interfered with his prior employer's contract with

---

[96] CR 644-645 at ¶78-89.

[97] RR Vol. 1 47:7-48:14.

[98] CR 942-967.

[99] September 3, 2019 RR Exhibits, Defendants' Exhibit 23 at 204:10-23.

Netwatch Solutions, this allegation was **completely defeated** by HollyFrontier's affidavit[100] which confirmed that the Netwatch contract with HollyFrontier was not cancelled in 2016 when the litigation arose, was paid in full for both 2016 and 2017, and HollyFrontier's determination to "wind down" its business relationship with Netwatch actually was due to Peter Beasley's vexatious litigation behavior. [101]

As demonstrated above, and presented at the hearing on September 20, 2018, none of Beasley's claims against Appellees was meritorious. Most were frankly matters that could be disposed of as a matter of law, either by application of the doctrine of judicial non-intervention or by other relevant Texas jurisprudence. Beasley's argument that Appellees presented no evidence is simply wrong.

E. Appellees Nonsuit of their Counterclaims is Wholly Irrelevant to the Determination of the Vexatious Litigant Motion.

Beasley argues that Appellees' nonsuit of their own counterclaims on April 5, 2019 is somehow evidence of Appellees' withdrawal of the vexatious litigant determination that had been made nearly four months prior. This is another nonsense argument. Appellees nonsuit of their counterclaims had no effect whatsoever on the determination that Beasley is a vexatious litigant. Beasley incorrectly argues that the Vexatious motion was a counterclaim. It was not.

[100] September 3, 2019 RR Exhibits, Defendants' Exhibit 24.

[101] *Id.*

And the transcript from the hearing makes it abundantly clear that the counterclaims were being nonsuited to permit the Vexatious Judgment to become final.

F. The Vexatious Litigant Statute is Constitutional.

Beasley appears to raise several arguments regarding the constitutionality of the vexatious litigant statute, but importantly, Texas courts have repeatedly held that the vexatious litigant statute is constitutional. Beasley's argument that the prefiling order prevents him from accessing the *ex parte* protections afforded to parties seeking protective orders and injunctive relief is nothing more than a last-ditch effort to try to avoid the inevitable. Beasley is well aware that the Office of Court Administration of the Supreme Court ("OCA") maintains the list of vexatious litigants in the state of Texas without regard to whether the Order declaring the party vexatious is final or not, on appeal or not. Section 11.104 of the Texas Civil Practices & Remedies code **requires** that the clerk of court provide the OCA a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the prefiling order is signed. The OCA is charged, by statute, with posting the name of the vexatious litigant on the OCA website.

Beasley is not prevented from access to the Courts by being on the OCA list, he is only prevented from *pro se* litigation without the approval of the local administrative judge. Alternatively, Beasley may retain an attorney, something that

his litigation history reveals he is more than comfortable doing when his needs require it.

The vexatious litigant statute is a means to "attempt to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Retzlaff v. GoAmerica Commc'ns Corp*., 356 S.W.3d 689, 697 (Tex.App. –El Paso 2011, no pet.) (*quoting Sweed v. Nye*, 319 S.W.3d 791, 793 (Tex.App. –El Paso 2010, pet. denied)). As such, no equal protection challenge against the statute has ever been successful. *See e.g., Leonard v. Abbott*, 171 S.W.3d 451, 458 (Tex.App. –Austin 2005, pet. denied); *Sparkman v. Microsoft Corp*., 2015 Tex.App. LEXIS 2510, *11-12 (Tex.App. –Tyler, March 18, 2015, pet. denied).

G. The Automatic Stay Imposed by the Vexatious Litigant Statute Precluded Hearings on any of Beasley's Ancillary Motions Until Beasley Paid the Required Security.

TEX. CIV. PRAC. & REM. CODE § 11.052(a)(2) states: "On the filing of a motion under § 11.051, the litigation is stayed and the moving defendant is not required to plead if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security."[102] *See also, Drum v. Calhoun*, 299 S.W.3d 360, 369 (Tex.App. –Dallas

[102] Appx. 2.

2009) (pet. denied) (when a vexatious litigant motion is granted, the litigation remains stayed as a matter of statutory law until the vexatious litigant posts the required security); *Willms v. Ams. Tire Co.*, 190 S.W.3d 796, 804 (Tex. App. –Dallas 2006) (pet. denied) ("When a defendant files a motion pursuant to section 11.051, the litigation is stayed until the tenth day after the motion is denied or the tenth day after the defendant receives notice that the plaintiff has furnished the required security.").

The stay went into effect the moment Appellees filed the motion to declare Beasley vexatious. Thus, the trial court's determination that the 2018 Rule 12 and attorney disqualification motions were stayed was correct. Moreover, after Beasley was declared vexatious, Beasley **never paid the security required** by the trial court's December 11, 2018 Order. Accordingly, the case remained stayed and the trial court was powerless to hear Beasley's 2019 Rule 12 Motions, Motions to Disqualify and Recuse, and various other frivolous ancillary motions filed by Beasley between December 11, 2018 and the date the case was finally dismissed on June 11, 2019.

In fact, Beasley's failure to pay the required security was dispositive and the trial court was required to dismiss Beasley's claims with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.[103] *See also, Gant v. Grand Prairie Ford, L.P.,*

[103] Appx. 4.

No. 02-06-00386-CV, 2007 Tex.App. LEXIS 5727, 2007 WL 2067753, *9 (Tex.App. –Fort Worth July 19, 2007) (pet. denied) (after trial court declared plaintiff a vexatious litigant, trial court had a duty as a matter of statutory law to dismiss plaintiff's lawsuit after plaintiff failed to furnish required security within time ordered). Beasley's complaints on appeal that the trial court was engaged in some vast Dallas County judicial conspiracy to deny Beasley access to the courts is par for the course for this vexatious litigant.

H. Beasley's Remarkable Attack on the Dallas County Judiciary is Nothing More than Unsupported and Offensive Rhetoric that Should Be Ignored by this Court.

Beasley saves his most offensive arguments for the closing pages of his brief. The conspiracy and disqualification allegations he levels against Judges Slaughter, Purdy, Goldstein and Moore, and the character attacks on Appellees' defense counsel reveal just how vexatious he is. His casual references invoking the TimesUp! and Black Lives Matter movements diminish the significance of both movements and the real issues both seek to address. Beasley's comparison of his vexatious litigant status to being falsely accused of rape is offensive to sexual assault victims everywhere. And the allegations of discrimination by members of the Texas bar and Dallas County Judiciary are unsupported and equally absurd. In typical vexatious fashion, Beasley levels blame at everyone but himself.

There is no conspiracy outside of his mind. For purposes of this appeal, the record does not include any motion to disqualify or motion to recuse any of the judges Beasley claims conspired against him. Moreover, there is also no record of any judge refusing to rule on a motion to recuse or disqualify. Thus, Beasley has failed to preserve any error on this issue. TEX. R. APP. P. 33.1(a)(2).

VII.
CONCLUSION & PRAYER

An appellate court reviews a vexatious litigant determination under an abuse of discretion standard. Under this standard, the court of appeals will view the evidence in the light most favorable to the trial court's order and indulge every presumption in the judge's favor. *Garner v. Garner*, 200 S.W.3d 303, 306, 308 (Tex. App. –Dallas 2006, no pet.) (clarifying the abuse of discretion standard).

Appellees established at the hearing on the vexatious litigant motion that Appellant Peter Beasley meets the definition of a vexatious litigant pursuant to Chapter 11 of the TEXAS CIVIL PRACTICE & REMEDIES CODE. Appellees request that this Court affirm the trial court's determination.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing instrument was prepared using Microsoft Word 2010, and that, according to its word-count function, the sections of the foregoing reply brief covered by TRAP 9.4(i)(1) contain 10,018 words.

/s/ Soña J. Garcia
Soña J. Garcia

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served via the electronic noticing system on October 10, 2019.

/s/ Soña J. Garcia
Soña J. Garcia

EXHIBIT B

EXHIBIT A

APPENDIX

EXHIBIT B

EXHIBIT A

voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

(f) The filing of a general denial under Rule 92, Texas Rules of Civil Procedure, shall not be deemed a violation of this chapter.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.005. ORDER. A court shall describe in an order imposing a sanction under this chapter the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.006. CONFLICT. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 11. VEXATIOUS LITIGANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

(2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

EXHIBIT B EXHIBIT A

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.01, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 2, eff. September 1, 2013.

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

(1) determining that the plaintiff is a vexatious litigant; and

(2) requiring the plaintiff to furnish security.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

(1) if the motion is denied, before the 10th day after the date it is denied; or

(2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

(1) written or oral evidence; and

(2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; or

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a

vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

EXHIBIT B EXHIBIT A

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.02, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 4, eff. September 1, 2013.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a

litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.03, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 5, eff. September 1, 2013.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101

unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.04, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the

court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 8, eff. September 1, 2013.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.05, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 9, eff. September 1, 2013.

CAUSE NO. DC-16-03141

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER,	§	
	§	
	§	
Defendant	§	**162ND JUDICIAL DISTRICT**

ORDER GRANTING ATTORNEY'S FEES TO DEFENDANT AS PREVAILING PARTY ON DECLARATORY JUDGMENT CLAIMS

On November 3, 2017, Defendant's Supplemental Motion for Sanctions seeking to have Defendant declared a prevailing party and request for attorneys' fees came on for hearing. The Court, having considered the pleadings, evidence, and arguments of counsel, is of the opinion that the Defendant's Motion should be **GRANTED**.

Based on the evidence presented and the procedural history of this lawsuit, the Court makes the following findings and conclusions:

1. Plaintiff filed certain declaratory judgment claims on April 15, 2016.
2. Defendant moved for summary judgment on those claims.
3. The hearing on the motion for summary judgment was scheduled for October 12, 2017, making Plaintiff's response due on October 5, 2017.
4. On October 5, 2017, in lieu of filing a response to the motion for summary judgment, Plaintiff nonsuited his entire case.

5. The following factors support a finding that the nonsuit was filed to avoid an unfavorable ruling on the merits:

   (a) the timing of the nonsuit;

   (b) the strength of the motion for summary judgment;

   (c) the failure to respond to the motion;

   (d) the Plaintiff's prior litigation history, including a dismissal of all claims after resting his case during trial, which dismissal he then appealed to the Dallas Court of Appeals[1]; and

   (e) Plaintiff's conduct during this very contentious litigation, including his conduct as a *pro se* party and as a Plaintiff in conjunction with five different appearances by lawyers, involving the resources of eight (8) different judges in six (6) different courts.

6. The reasonable and necessary attorney's fees and costs incurred by Defendant in defense of the declaratory judgment claims is $ 211,032.02

IT IS THEREFORE ORDERED that Defendant is declared the prevailing party on Plaintiff's declaratory judgment claims and that, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 37.009, Plaintiff Peter Beasley is hereby **ORDERED** to pay Defendant's reasonable and necessary attorney's fees and costs in the amount of $ 211,032.02

[1] *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, in the Court of Appeals for the Fifth District of Texas at Dallas, No. 05-15-00156-CV (September 20, 2016)

SIGNED this 3 day of ~~October~~ November, 2017.

Presiding Judge

No. 05-19-00607-CV

In the Court of Appeals
For the Fifth Court of Appeals District
Dallas Texas

Peter Beasley,

Plaintiff – Appellant,

v.

Society of Information Management,
Dallas Area Chapter, et. al.

Defendants – Appellees

Appeal from the 191st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-18-05278
The Honorable Judge Gena Slaughter

APPELLANT'S BRIEF ON THE MERITS

Peter Beasley, *pro se*
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

ORAL ARGUMENT REQUESTED

I. IDENTITIES OF PARTIES

1. Appellant - Plaintiff is PETER BEASLEY, a resident of Dallas County, Texas. Mr. Beasley is appearing *pro se* before this court.

2. Appellee – the primary Defendant is the SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, ("SIM-DFW"), a Texas Corporation.

3. Appellees SIM Dallas, Janis O'Bryan, and Nellson Burns are represented by Robert Bragalone and Soña Garcia of Gordon Rees Scully Mansukhani, 2200 Ross Avenue, Suite 4100, Dallas, TX 75201-2708, and by Peter Vogel of Foley Gardere LLP, 2021 McKinney Ave. Ste. 1600, Dallas, TX 75201.

EXHIBIT C

II. TABLE OF CONTENTS

EXHIBIT C

EXHIBIT C

III. INDEX OF AUTHORITIES

Constitutional Provisions

Statutes

Rules

EXHIBIT C

Cases

EXHIBIT C

IV. STATEMENT OF THE CASE

Beasley, as amended, filed Breach of Contract, Fraudulent Inducement, Defamation, Tortuous Interference, Declaratory Judgment, Due Process, and Injunctive causes of actions[1]. On December 11, 2018, the court entered a Prefiling Order[2] under the Texas Vexatious Litigant statute – the judgment under appeal.

V. STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested to help simplify the facts that the *pro se* appellant may not have presented clearly in written form.

VI. NOTICE OF APPEAL UNDER RULE 34.6(c)

May 28, 2018, Beasley gave notice of an appeal under Rule 34.6 (c). Tex. R. App. P. 34.6(c). *Bennett v. Cochran*, 96 S.W.3d 227, 228-30 (Tex. 2002) (per curiam)(avoids the ordinary presumption that items omitted from the record support the judgment)

[1] C.R. 629 - 648. App. Tab B, p. A3.
[2] C.R. 1,259 – 1,260, App. Tab A, p. A1.

EXHIBIT C

VII. FOUR ISSUES PRESENTED

5. Whether a Prefiling Order may stand against a litigant when defendants completely ignored the statute and presented no evidence at all that the litigant had no reasonable probability to prevail on his claims?

6. Whether a counter-plaintiff may preemptively complain that a counter-defendant is a vexatious litigant when the counter-plaintiff is the plaintiff that filed the lawsuit, as Texas has no cognizable independent cause of action to do so?

7. Whether a party can seek to declare a citizen a vexatious litigant by filing a motion 93 days after the filing of a document which provided a ground for avoidance of the lawsuit?

8. Whether the Prefiling Order is unconstitutionally overbroad, as the order unnecessarily eliminates a citizen's right to an *ex parte* restraining order or an *ex parte* protective order for the rest of that person's life?

VIII. STATEMENT OF FACTS

Beasley did file lawsuit, No. 296-05741-2017, against three defendants in Collin County on November 30, 2017[3]. The tort claims, as amended, against the corporate defendant, SIM DFW, included fraudulent inducement, breach of contract, defamation, and tortious interference[4]. Beasley sued the individual defendants on a derivative action on behalf of SIM-DFW[4].

All three defendants responded to the lawsuit by first filing a Motion to Transfer Venue on January 16, 2018[5]. Their pleading includes "Peter Beasley is a vexatious litigant[6]" and prayed that "Peter Beasley take nothing by way of his claims.[7]"

March 2, 2018, SIM DFW, as a counter-plaintiff, sued Beasley, a counter-defendant, for declaratory judgment relief and defendant Burns, as a counter-plaintiff, sued Beasley for defamation[8].

---

[3] C.R. 1362
[4] C.R. 629 – 648, Tab B, p. A3 – A22.
[5] C.R. 22 - 628
[6] C.R. 29
[7] C.R. 32
[8] C.R. 649. Tab F. p. A70 – 81.

EXHIBIT C

The 296th District Court of Collin County transferred the controversy on April 18, 2018[9], and the next day, April 19, 2018, which was 93 days after their first pleading was filed, all three defendants filed a Motion to Declare Peter Beasley a vexatious litigant in Dallas County[10].

To advance their counter-claims and to have the lawsuit filed in Dallas County, defendant Burns paid the $123.00 copy / transfer fee in Collin County[11] and defendant SIM-DFW paid the $292.00 Dallas County filing fee[12]. Rules of the Clerks of both Collin[13] and Dallas County[14] require those fees are to be paid by the plaintiff.

The "new case filed" on April 19, 2018, is DC-18-05278[15].

Beasley responded to defendants' motion with several defenses[16], including that 1) Defendants would be unable to show Beasley had no probability to prevail in all of his claims[17], 2) he did not file the lawsuit

[9] C.R. 662
[10] C.R. 663 - 989
[11] C.R. 1367
[12] C.R. 21
[13] C.R. 1357 - 1358
[14] C.R. 1359, Tab G, p. A82.
[15] C.R. 6
[16] C.R. 1057 – 1085, Tab D, p. A38 – A66
[17] C.R. 1061, Tab D, p. A42

EXHIBIT C

in Dallas County[18], 3) defendants' motion was late filed[19], and 4) the Vexatious Litigant statute was unconstitutionally overbroad[20].

The trial court, the 191st Judicial District Court, held a hearing on September 20, 2018, on defendants' vexatious litigant motion[21]. At the hearing, defendants offered no sworn testimony and introduced no evidence that Beasley had no probability to prevail on all of his claims. About Beasley's constitutional challenges, the trial judge stated:

> "This issue about the constitutionality of somebody being ruled a vexatious litigant, I don't think that's my job. I mean, I hate to say, I think that usually has to be raised in the Appellate Court or in the Supreme Court, I don't think that I go there."[22]

On December 11, 2018, the trial court granted defendants' motion and entered a Prefiling Order[23] – to which Beasley appeals.

---

[18] C.R. 1063, Tab D, p. A44.
[19] C.R. 1061 – 1063, Tab D, p. A42 – A44.
[20] C.R. 1065 – 1067, Tab D, p. A46 – A48
[21] RR.1 September 20, 2018 hearing transcript
[22] R.R.2 April 5, 2019, hearing transcript: 49:10 – 15.
[23] C.R. 1259

EXHIBIT C

IX. SUMMARY OF THE ARGUMENT

A Prefiling Order may only stand from a proper determination that a party has been declared a vexatious litigant. While defendants may have pursued such a determination in Collin County, Beasley did nothing to cause defendants to be sued in Dallas County. He fought the transfer to Dallas County, he did not pay the copy / transfer fees, and he did not pay the filing fee. Hardly can defendants complain about being sued when it was their own actions, as counter-plaintiffs, that caused the lawsuit to be filed. There is no such declaration of a vexatious defendant.

Even if they had tried in Collin County, the evidence was legally insufficient to declare anyone a vexatious litigant. Beasley is not a vexatious litigant. Furthermore, defendant's request was too late.

Lastly, the Prefiling Order is unconstitutional, as it eliminates a right to obtain an ex parte temporary restraining or protective orders without hiring a lawyer, which imposes a restrictive financial bar, when this rights deprivation could be achieved through less restrictive means.

X. THIS COURT HAS JURISDICTION

A Prefiling Order may be appealed[24]; however the statute stands silent on whether that appeal is 1) by interlocutory appeal, 2) by mandamus, or 3) by a direct appeal at the conclusion of the proceedings.

May 15, 2019, this court indicated the Prefiling Order is subject to an interlocutory appeal[25]. TAB C, P. A36. *See*, *Nunu v. Risk*, 567 S.W.3d 462, 466–67 (Tex. App.—Houston [14th Dist.] 2019). The *Nunu* ruling however was issued on January 15, 2019, the last day for Beasley to file an out-of-time interlocutory appeal of the December 11, 2018 judgment.

Mercifully, January 11, 2019, Plaintiff's counsel filed a Motion for Reconsideration within the period to perfect an interlocutory appeal with an extension of time. The motion indicates Beasley's desire to reverse the Prefiling Order[26], where the substance of a pleading determines its nature, not merely the title given to it. *Johnson v. State Farm Lloyds*, 204 S.W.3d 897, 906 (Tex.App.-Dallas 2006, pet. filed). It is unmistakable that Beasley desired to challenge and reverse the Prefiling order.

---

[24] TEX. CIV. PRAC. & REM. CODE § 11.101 (c)
[25] 05-19-00422-CV, Memorandum Opinion, Justice Molberg
[26] C.R. 1261 – 1341

EXHIBIT C

The Supreme Court has instructed the courts of appeals to construe the Rules of Appellate Procedure reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of a rule. *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). The required motion for an extension of time to be filed in the appeals court may be necessarily implied. *See*, *Verburgt, Id.*, at 617 - 618.

Given the automatic stay in trial proceedings, there is no necessary purpose to enforce a strict reading of the appellate rules to disallow the appeal. The underlying judgment is interlocutory, and no "finality of a judgment" is threatened.

The facts are the same. Whether by mandamus, interlocutory appeal, or by a subsequent direct appeal, the trial court's error in declaring Beasley a vexatious litigant is easily seen and should be reversed. TEX. R. CIV. P. 1.

Given these facts, this court has the discretion to find jurisdiction over this appeal of the Prefiling Order and resolve the underlying vexatious litigant dispute, once and for all.

XI. ARGUMENT

ISSUE 1: WHETHER A PREFILING ORDER MAY STAND AGAINST A LITIGANT WHEN DEFENDANTS COMPLETELY IGNORED THE STATUTE AND PRESENTED NO EVIDENCE AT ALL THAT THE LITIGANT HAD NO REASONABLE PROBABILITY TO PREVAIL ON HIS CLAIMS?

Before a court may issue a Prefiling Order, it must find that the plaintiff is a vexatious litigant. *See, Nunu, Id.* at 467. To declare a litigant vexatious, the defendant must show that the plaintiff had no reasonable ability to prevail on his claims. TEX. CIV. PRAC. & REM. CODE § 11.054.

But, at the hearing, defendants only made arguments, and failed to introduce any evidence showing why Beasley could not prevail on his suit. *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914, 919 (Tex. App.-Dallas 2013, no pet.) (noting also that a defendant who fails to offer any evidence showing why the plaintiff could not prevail on his suit has failed to meet its burden).

In Nunu, the Houston court of appeals found that a prior nonsuit, with prejudice, was sufficient to show that Paul Nunu could not prevail in his current lawsuit. Similarly, a prior adverse judgment or a showing that a statute of limitations prevented a lawsuit could be legally

sufficient evidence that a litigant could not prevail against a particular defendant, on certain specific claims.

But in this instant case, there were three (3) defendants and thirteen (13) claims[27]. At no time during the hearing did any of the defendants provide evidence that Beasley could not prevail on all of his claims. As a result, the evidence was legally insufficient to declare Beasley a vexatious litigant, hence the Prefiling Order was entered as an abuse of discretion. *See, Amir-Sharif, Id*.

ISSUE 2: WHETHER A COUNTER-PLAINTIFF MAY PREEMPTIVELY COMPLAIN THAT A COUNTER-DEFENDANT IS A VEXATIOUS LITIGANT WHEN THE COUNTER-PLAINTIFF IS THE PLAINTIFF THAT FILED THE LAWSUIT, AS TEXAS HAS NO COGNIZABLE INDEPENDENT CAUSE OF ACTION TO DO SO?

There is no Texas independent cause of action; where a defendant may seek to declare a plaintiff a vexatious litigant ***only*** in a lawsuit filed by the plaintiff. But Beasley did not file the lawsuit in Dallas County, defendants did! There is no such thing as a vexatious defendant, as the statute clearly provides only for a **defendant to find**

[27] C.R. 638 –647, 2nd Amended Petition, App. Tab B, p. Ax

EXHIBIT C

a plaintiff vexatious "if the litigation against the defendant". TEX. CIV. PRAC. & REM. CODE § 11.054.

Beasley does concede, that if there was evidence to do so (and he maintains there wasn't), Defendants may have sought to declare Beasley a vexatious litigant in Collin County, where Beasley did file a lawsuit.

Chapter 11 of the Texas Civil Practice and Remedies Code provides the mechanism to restrict frivolous and vexatious litigation. See TEX. CIV. PRAC. & REM. CODE § 11.051; *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). In this chapter, the Texas Legislature sought to strike a balance between Texans' right of access to the courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit. *Willms v. Americas Tire Co.*, 190 S.W.3d 796, 804 (Tex.App.-Dallas 2006, pet. denied). The purpose behind the statute was to curb vexatious litigation by requiring plaintiffs found by the court to be "vexatious" to post security for costs before proceeding with a lawsuit. *Id.*

There is no good faith reason to transfer a frivolous lawsuit to another county[28]. The statute contemplates for a defendant within 90 days of the institution of a lawsuit by a plaintiff to quickly curb and stop a frivolous lawsuit. And rightfully so!

But here, Defendants, instead are attempting to create a proactive, independent cause of action, not cognizable under Texas law.

Defendants petitioned to transfer the lawsuit to Dallas County. April 10, 2018, defendants, as counter-plaintiffs, ***intentionally*** paid the copy fee[29] in Collin County to transfer ***their*** lawsuit, and once the lawsuit was in Dallas County, they immediately filed a motion April 19, 2019, to find Beasley a vexatious litigant. On, April 20, 2018, defendants *intentionally* paid the filing fee[30] when there was **absolutely no need for them to do so**, as the lawsuit had already been filed in Dallas County. It is unmistakable that Defendants wanted to pursue their claims against Beasley, including declaring him a vexatious litigant; although Beasley had done nothing to sue Defendants in Dallas County.

---

[28] On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead. TEX. CIV. PRAC. & REM. CODE § 11.052 (a)

[29] C.R. 1,367

[30] C.R. 10

EXHIBIT C

Any complaint Defendants have by being sued in Dallas County they cannot maintain as they invited the lawsuit. No one would rightfully pay their opponents fees to have themselves sued; the logical presumption is that the counter-plaintiffs filed the lawsuit, and not Beasley. Doctrines of equitable estoppel, invited error, inconsistent actions, and the doctrine of laches all bar the counter-plaintiffs from filing the lawsuit late, in a second county, to proactive declare a counter-defendant vexatious.

And Beasley properly pled to assert these affirmative defenses.[31]

Based on their delay in pursuing a vexatious litigant finding within the first 90 days in Collin County, Beasley relied on their delay and did then maintain his complaints against defendants in Dallas County. In particular, Defendant SIM-DFW sued Beasley for declaratory judgment[32] ***in exact, direct opposition*** to Beasley's declaratory judgment[33] against SIM-DFW. Hardly can SIM-DFW complain about being sued in opposition to how they sued Beasley.

[31] C.R. 998, Tab E, p. A67.
[32] C.R. 653, Tab F, p. A74.
[33] C.R. 641, Tab B, p. A15.

EXHIBIT C

The elements of laches are: (1) unreasonable delay by one having legal or equitable rights in asserting them and (2) a good faith change in position by another to his detriment because of the delay. *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 80 (Tex.1989).

It was unreasonable for defendants to wait for more than 110 days of when they learned they had been sued[34] in Collin County before they filed their vexatious litigant motion, as they had previously attempted another late-filed declaration against Beasley nearly one year earlier.[35]

Defendants may not lie behind the log, transfer the lawsuit across two Texas counties, into 4 other district courts[36], and involve 5 additional district and presiding judges[37] and their clerks, and then jump-up and cry that there was some foul. Defendants may not file a lawsuit and sue Beasley that requires him to pursue his counter-claims, to entrap him as being a vexatious plaintiff. The vexatious litigant statute does authorize a court for such a use.

---

[34] C.R. 7. All defendants were served with notice of the lawsuit on 12-28-2017.

[35] C.R. 1262 In 2017, the "162nd District Court found that Defendants' vexatious litigant motion was untimely filed."

[36] The 296th, 44th, 162nd, and 191st District Courts.

[37] The Honorable Judges John Roach, Jr.; Bonnie Lee Goldstein; Maricela Moore; Regional Presiding Judge Ray Wheless; and Gena Slaughter.

EXHIBIT C

ISSUE 3: WHETHER A PARTY CAN SEEK TO DECLARE A CITIZEN A VEXATIOUS LITIGANT BY FILING A MOTION 93 DAYS AFTER THE FILING OF A DOCUMENT WHICH PROVIDED A GROUND FOR AVOIDANCE OF THE LAWSUIT?

On page 8 of Defendants' January 16, 2018, motion to transfer venue[38], they added the phrase "Beasley is a vexatious litigant" and added in their prayer[39], "Defendants pray that Plaintiff Peter Beasley take nothing by way of his claims, that Defendants recover their attorneys' fees, costs and expenses as allowed by law".

By rule:

> The original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, ***and any defense by way of avoidance or estoppel***, and it may present a cross-action, which to that extent will place defendant in the attitude of a plaintiff.

Defendants added a defense to the lawsuit in their Motion to Transfer Venue, making that pleading an answer, and therefore defendants' April 19, 2018, vexatious litigant motion was 3 days too late.

---

[38] C.R. 29
[39] C.R. 32

EXHIBIT C

It is an abuse of discretion to grant a vexatious litigant motion filed more than 90 days after an answer. *See Dishner v. Huitt-Zollars, Inc.*, 162 S.W.3d 370, 377 (Tex. App.-Dallas 2005, no pet.) (holding the trial court abused its discretion in declaring appellant a vexatious litigant because motion filed outside the ninety-day time period)

ISSUE 4: WHETHER THE PREFILING ORDER IS UNCONSTITUTIONALLY OVERBROAD, AS THE ORDER UNNECESSARILY ELIMINATES A CITIZEN'S RIGHT TO AN EX PARTE RESTRAINING ORDER OR AN EX PARTE PROTECTIVE ORDER FOR THE REST OF THAT PERSON'S LIFE?

This appears to be a consideration of first impression.

To protect people from family violence, all citizens in Texas may obtain protective orders, and when necessary, such orders may be obtained ex parte[40]. Likewise, litigants may obtain ex parte relief when filing a lawsuit to protect the status quo. See, *Qwest Commc'n Corp. v. AT&T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000) (per curiam).

---

[40] If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant. TEX. FAM. CODE § 83.001 (a).

However, a Prefiling Order and Chapter 11 of the Vexatious Litigant requires:

> A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation ***shall provide a copy of the request to all defendants*** named in the proposed litigation. TEX. CIV. PRAC. & REM. CODE § 11.102 (b).

As a result, a vexatious litigant cannot seek an *ex parte* order as he may not file a lawsuit, *pro se*, without first informing the defendants.

Article I, section 13 of the Texas Constitution provides in part that "all courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. art. 1 § 13..; *Howell v. Texas Workers' Comp. Comm'n*, 143 S.W.3d 416, 444 (Tex.App.-Austin 2004, pet. denied). "The open courts provision includes at least three separate guarantees: (1) courts must actually be operating and available; (2) the Legislature cannot impede access to the courts through unreasonable financial barriers; and (3) meaningful remedies must be afforded, `so that the legislature may not abrogate the right to assert a well-established common law cause of action unless the reason for its action outweighs the litigants' constitutional right of redress.'" *Howell*, 143 S.W.3d at 444.

A claim of unconstitutionality under the open courts provision will only succeed if the claimant (1) has a cognizable common-law cause of action being restricted by a statute, and (2) the restriction is unreasonable or arbitrary when balanced against the purpose and basis of the statute. *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 843 (Tex.1990). In applying this test, the statute's general purpose and the extent to which the claimant's right to bring a common-law cause of action is affected should be considered. *Howell*, 143 S.W.3d at 444.

The statute does allow a vexatious litigant to still file lawsuits, but they must first hire an attorney. This would-be plaintiff could potentially file the exact same lawsuit, in substance, the litigant contemplated *pro se*, as the statute merely requires a licensed attorney to first review the pleadings to ensure they are not frivolous. However, hiring an attorney imposes an undesired financial bar.

But there is no need to inform the defendants of the potential lawsuit, as the local administrative judge, no different than the judge granting an *ex parte* order, can appraise *ex parte* whether the lawsuit is frivolous. Likewise, the local administrative judge, no different than an attorney

who might represent the would-be plaintiff, can appraise whether the lawsuit is frivolous.

Beasley has a common-law cognizable right to be able to obtain *ex parte* protective orders and *ex parte* restraining orders, without the financial bar of hiring an attorney. The requirement that Beasley first inform a potential litigant of his actions is unreasonable, and may easily lead to irreparable harm and subject him to physical violence.

Because the Prefiling Order in the Vexatious Litigant statute unreasonably restricts Beasley and a citizen's right to an *ex parte* order, the Prefiling Order is unconstitutional and should be vacated.

XII. PRAYER

Beasley seeks an order: vacating the Prefilng Order as the trial court abused its discretion in finding plaintiff a vexatious litigant, and because the order is unconstitutional. Beasley prays for general relief.

Respectfully

/s/Peter Beasley
Peter Beasley, Plaintiff – Appellant, pro se

Peter Beasley
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

EXHIBIT C

XIII. CERTIFICATE OF COMPLIANCE

Appellant, Peter Beasley, hereby certifies the word-limited sections of this document contain 3,508 words, per Rule 9.4.

Dated: June 18, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

Peter Beasley
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

XIV. CERTIFICATE OF SERVICE

Plaintiff-Appellant, Peter Beasley, hereby certifies that on June 18, 2019, the attached document was served on the Appellees through the court's electronic filing system.

Dated: June 18, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

Peter Beasley
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

EXHIBIT C

XV. APPENDIX

Table of Contents

EXHIBIT C

Tab A

EXHIBIT C

CAUSE NO. DC-18-05278

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, et al.,	§	
	§	
	§	
Defendant.	§	**191st JUDICIAL DISTRICT**

ORDER GRANTING DEFENDANTS' MOTION TO DECLARE PETER BEASLEY A VEXATIOUS LITIGANT

On September 20, 2018, the undersigned heard Defendants' Motion to Declare Peter Beasley a Vexatious Litigant. The Parties appeared through counsel. After considering the motion, the post-hearing briefing from both parties, the evidence presented, and arguments of counsel, the Court finds that the statutory elements are satisfied in all respects and therefore makes the following ORDER.

The Motion to Declare Peter Beasley a Vexatious Litigant is **GRANTED** and the Court declares Peter Beasley a Vexatious Litigant.

Plaintiff Peter Beasley is required to post bond in the amount of $422,064.00 with the District Clerk as security per TEX. CIV. PRAC. & REM. CODE § 11.055 within thirty (30) days of this Order. If such security is not timely posted, this case will be dismissed with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.

Furthermore, the Court prohibits Plaintiff Peter Beasley from filing any new lawsuits *pro se* in any court in the State of Texas until Plaintiff receives permission from

the appropriate local administrative judge pursuant to sections 11.101 and 11.102 of the TEX. CIV. PRAC. & REM. CODE. Failure to comply with this ORDER shall be punishable by contempt, jail time, and all other lawful means of enforcement. TEX. CIV. PRAC. & REM. CODE § 11.101(b).

It is further ORDERED that the Clerk of the Court provide a copy of this order to the Office of Court administration of the Texas Judicial System within 30 days of entering this order.

SIGNED this 11th day of ~~October~~ December, 2018.

JUDGE PRESIDING

Tab B

EXHIBIT C

Filed: 2/22/2018 3:39 PM
Lynne Finley
District Clerk
Collin County, Texas
By LeAnne Brazeal Deputy
Envelope ID: 22710309

Cause No. 296-05741-2017

PETER BEASLEY Plaintiff	§	IN THE DISTRICT COURT OF
v.	§	COLLIN COUNTY, TEXAS
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS OôBRYAN, NELLSON BURNS	§	296th JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION

Plaintiff, Peter Beasley, (ñBeasleyò) files this Second Amended Petition, complaining of Defendants, Society for Information Management, Dallas Area Chapter, Janis OôBryan, and Nellson Burns, and states:

I. NATURE OF THE CASE

1. This is a contract dispute involving a voluntary professional business associationôs failure to honor its contract with a member, a member of its board of directors, and its resulting acts to defame and injure plaintiff, for which he seeks monetary damages, declaratory and injunctive relief.

2. Plaintiff also mounts a derivative suit on behalf of SIM Dallas against the individual defendants, Janis OôBryan and Nellson Burns.

II. PARTIES

3. Plaintiff is Peter Beasley, an individual residing in Dallas County.

4. Defendant, Society for Information Management, Dallas Area Chapter (ñSIM Dallasò), is a Texas nonprofit corporation and an Internal Revenue Code §501(c)(6) organization. Defendant operates across the entire North Texas region and has its official business address at P.O. Box 208, Frisco, TX, 75034, in Collin County.

5. Defendant. Janis OôBryan, (ñOôBryanò), is an individual resident of Dallas County as is the current, past president of SIM.

6. Defendant. Nellson Burns, (ñBurnsò), is an individual resident of Dallas County, and is the current president of SIM.

III. DESIGNATIONS

A. Discovery Control Plan

7. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

B. Claim for Relief

8. Plaintiff seeks monetary relief over $1,000,000, and non-monetary relief.

9. Plaintiff seeks declaratory relief.

10. Plaintiff seeks injunctive relief and imposition of a receiver to take control over the Society of Information Management Texas corporation, to restore its operation to those within the laws of this state.

C. Jurisdiction

11. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Courtôs minimum jurisdictional requirements.

12. The Court has personal jurisdiction over defendants

a. Because the primary defendant is a resident/citizen/business organization formed under the laws of the State of Texas.

D. Mandatory Venue

13. Venue is proper in Collin County under Texas Civil Practice & Remedies Code section 15.002 (3) because, during the time the basis of the suit accrued, defendant's principal office in this state is in Collin County.

14. Venue is mandatory in Collin County in a suit for libel, under Texas Civil Practice & Remedies Code § 15.017 because Collin County is the principle office of the defendant, and plaintiff elects to sue in Collin County.

IV. THE UNDERLYING DISPUTE

15. This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a *substantial* give-away of memberôs dues to non-members who are friends of the board and 2) to stop the organizationôs discriminatory membership practices ï to unfairly exclude minorities, keeping them from advancement opportunities.

V. FACTUAL BACKGROUND

16. Beasleyôs SIM Membership and Offices Held. Beasley is a member of SIM Dallas and has been a member in good standing of the organization since September 2005. For each of those years, Beasley paid dues to SIM Dallas. Total dues paid by Beasley to SIM were approximately $5,345.00. Beasley has volunteered hundreds of hours of his time to help SIM thrive. Beasley is also a Director serving on the SIM Dallas Executive Committee, (ñBoardò), and is the Membership Committee Chair, (ñMembership Chairò). Beasley was first elected to the Board in November 2012, and reelected in 2013, 2013, and 2014. Beasley was elected for his second annual term as Chair on November 9, 2015, for the 2016 program year.

17. Beasley was the first African-American elected to SIMôs Board in its history.

18. Contract Board Agreements. To secure and protect Beasley to serve in a legal, fiduciary role to the SIM Dallas, Beasley and SIM had an agreement beginning January 8, 2013, that SIM Dallas will a) cover Beasleyôs activities serving on the board under the insurance carried by the SIM organization, b) operate within the bylaws and organizational charter, and c) agreed to supervise Beasleyôs activities as a board member. In return, Beasley agreed to a) volunteer his time in service of the corporation, b) would resign if he was unable to perform his duties, c) accept the liabilities of being a director of a Texas corporation. In exchange for the insurance protection and contract of responsibilities defined in the bylaws to protect Beasley, he relied on that promise and agreed to take-on the personal financial liability for his actions working as a director of the corporation, and served on the board in 2013, 2014, 2015, and 2016.

19. Control of the SIM Board. The SIM Board has 10 voting members and 5 officers. Under the bylaws, the SIM Dallas Board is led by its CEO, the President. For 2016, the SIM President was Janis OôBryan (ñOôBryanò) and its Presidentôs elect was Nellson Burns (ñBurnsò) ï the 2017 and 2018 President of SIM Dallas.

20. Beasleyôs Advocacy to SIM and its Board. In his position as a Director and Membership Committee Chairman, Beasley observed numerous violations by SIM Dallas in following its bylaws. In his first year on the Board, Beasley successfully amended the bylaws to bring SIM into compliance with how it recertified members annually for continued membership. Beasley became staunch in support of following the bylaws within the Board, warning against: a) wasting and hording of

hundreds of thousands of dollars in corporate assets; b) allowing non-voting members of the Board to vote; c) constituting a board or directors in contravention of the bylaws, d) the failure of certain Board members to exercise independent professional judgment, rather than simply rubber-stamping the decisions of a few Board members who controlled the Board, e) the President (OôBryan) appointing an individual to the board (Bouldin) without vote or approval of the board, f) and allowing a husband and wife to serve as members of the board. Beasley advocated appointment of a Parliamentarian, to have officers with access to the corporate funds (in excess of $400,000) to be bonded, and advocated the organization provide annual financial reports to the members.

21. Waste of SIMôs Assets By Board. SIM Dallas is exempt from federal taxes, under IRS regulation 501(c)(6), as a Business League, (not as a 501(c)(3) charity). SIMôs purpose as an organization is to further the education and professional support of its members.

22. SIMôs Articles of Incorporation and its bylaws both specify the purpose for which the corporation is organized:

> The specific purpose and primary purpose is to foster the development of information systems for the improvement of the management performance of its members.

The Articles further provide that ñthis corporation shall not, except to an insubstantial degree, engage in any powers that are not in furtherance of the primary purpose of this corporationò and that ñthis corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this corporation.ò Article I, Section 2 of SIMôs current, September 9, 2013, bylaws lists five (5) activities to benefit members, none of which list the donation of SIM assets to aid others.

23. In spite of the founding documents, OôBryan, Burns, and others have sought to run the organization as a philanthropic venture, and not a business league. Beasley objected and argued against such donation activity, which is contrary to SIMôs organizational articles and its bylaws. Despite Beasleyôs ongoing objections, OôBryan rebuffed Beasley, and announced her intention to force through such measures. Furthermore, several Directors have sought approval to use SIMôs $402,188 available in cash assets to fund activities to benefit members, but OôBryan blocked use of the funds for such proper purposes. Although Beasley attempted to work with other Board members to find a way to resolve the conflict, OôBryan

refused to meet with or discuss the issues with Beasley. In February 2016, she began making false accusations against Beasley, removing responsibilities from him, and denying him permission to attend, on behalf of SIM, the national leaderôs conference.

24. Beasley, with the support of other board members, offer several valid options to resolve the dispute:

a. Hold transparent ñcharity eventsò so that any monies raised for philanthropy would be kept separate and distinct from memberôs assets, as was recommended by SIM National and other SIM Chapters;

b. Ask the members to vote-in a level of philanthropy (i.e. 10% of assets); or

c. Submit a vote to the members to eliminate the bylaw restriction to allow for ñsubstantialò use of funds in ways as voted by the board,

but SIM Dallas would not allow these simple options to resolve the dispute.

25. Discriminatory Membership Practices. Beasley further advocated to the Board about its discriminatory membership practices, which resulted in minorities being under-represented in the SIM membership.

26. Beasley detected and documented a long-standing practice to keep SIM Dallasô membership to primarily consist of White Males only. Into the 2000ôs, the face of society, the information technology ranks and the people of North Texas have become more diverse. However, SIM Dallasô membership practices of the 2012 ï 2016 era disproportionately tried to excluded women, India nationalists, Blacks (African-Americans, Africans), Middle-Easterners and Hispanic applicants.

27. **Under Beasley's term serving on and leading Membership, the SIM Dallas membership percentage of White Men dropped noticeably.**

28. Challenges to Beasleyôs membership recommendations mounted month by month in 2015 and 2016, with a stated complaint that Beasley does not ñprotect the brandò. Beasley documented a practice by board members John Cole, Nellson Burns, and Patrick Bouldin, (who all had a business relationship with Nellson Burns), and others, to challenge India, Black, Hispanic, and Female candidates for membership. To ward-off non-voting members of the board from succeeding at discriminatory membership practices, on **March 18, 2016**, Beasley modified his committeeôs procedures to no longer accept challenges from non-voting members of the board.

29. **SIM Dallas then moved to expel Beasley**.

30. Improper and Void Expulsion of Beasley from SIM. March 2016, Burns, OôBryan, and the other Officers on the Board, via e-mail exchange, decided to embark upon a campaign to rid SIM of Beasley. SIM invited Beasley to come to a downtown Dallas 8 a.m. meeting on March 24, 2016 (for the purpose of asking Beasley to resign, unknown to Beasley). However, at 6:00 a.m. the day of the scheduled meeting, Beasley received notice that the meeting had been cancelled. The next day, **March 25, 2016**, Beasley was informed via e-mail that SIM would hold a meeting of the Executive Committee on April 4, 2016, at 8:00 a.m. to seek Beasleyôs expulsion from SIM. No information was provided to Beasley on what he had done to cause his expulsion from membership in SIM.

31. In response to SIM Dallasô attempt to expel Beasley ï without telling him why or asking first for his resignation ï Beasley, March 29, 2016, Beasley sued SIM Dallas and sought and obtained a temporary restraining order in Dallas District Court, prohibiting his expulsion. Rather than meet and resolve the dispute, as Beasley asked to do, SIM Dallas removed the lawsuit to federal court.

32. In direct violation of the then valid Texas TRO, SIM Dallas met anyway on April 4, 2016, to discuss and plan the expulsion of Beasley. Although Beasley was still then a member of the Board, SIM Dallas intentionally excluded him from the meeting.

33. After expiration of the TRO while the lawsuit was in federal court, on April 13, 2016 at 9:17 p.m., Beasley received an e-mail, informing him that SIM Dallas intended to hold a meeting of the Executive Committee on April 19, 2016, at 8:00 a.m. to seek Beasleyôs expulsion. Again, no information was provided to Beasley on what he had done to cause his expulsion from membership in SIM Dallas. The notice for the meeting was legally improper and invalid because it provided Beasley less than the 7 daysô notice required in the bylaws. On April 17, 2016, Beasley objected to the notice on this basis and he further objected to allowing others to attend by phone, as the meeting notice provided no option for attendance by phone. In his objection, he indicated he would attend if 1) he was told the reason he faced expulsion where he could defend his membership rights, and 2) the meeting was rescheduled with proper notice given ï to potentially be represented by counsel.

34. Despite his objections, on April 19, 2016, Beasley was informed by e-mail that he had been expelled from SIM Dallas. SIM Dallasô minutes from the April 19,

2016, Executive Committee meeting indicated only ten members of the board were present at the meeting, which is not a quorum under SIM Dallasô bylaws and Texas law. Further, SIM Dallas used votes from non-voting members of the board who were illegally attending by phone to pretend they had enough votes to sustain expulsion. Accordingly, for many reasons, Beasleyôs purported expulsion from SIM Dallas was and is void.

35. After being the first African-American voted to the Board, Beasley became the ONLY member in the Chapterôs 34+ year history to ostensibly become expelled ï **of which Beasley vigorously disputes and seeks to overturn**.

36. Due Process Violation. The expulsion further violated Beasleyôs due process rights in that he was not given adequate notice, was given no notice of the ñchargesò to be brought against him, was given no opportunity to prepare a defense or to be represented by counsel. Moreover, the minutes reveal that that OôBryan and Burns instituted a ñkangaroo courtò to try Beasley in absentia. The charges brought were baseless and made in bad faith, and even the minutes prepared by the SIMs counsel indicate that the primary topic of discussion was the conflict over Beasleyôs insistence that SIM Dallas follow its own rules. The true purpose of OôBryan and Burns in forcing through Beasleyôs expulsion was to get him off the Board ï which, under the bylaws the Officers and other board members were without power to do. SIM Dallas acted in extreme bad faith, and the resulting expulsion was arbitrary, capricious, and in violation of the law.

37. Illegally Constituted Board. SIM Dallasô officerôs illegal action to attempt to remove Beasley from the board has led to all subsequent boards to be illegally constituted. The process to elect a new Executive Committee (board), per the bylaws, requires a vote of the current board to approve the following yearôs board. However, SIM Dallas has refused to allow Beasley his vote, and therefore any resulting board is illegally constituted.

38. Beasley Remains a Member of the Board. Beasley was elected to the Board by the members, and under the bylaws, only members have the exclusive power to remove a board member, and Texas law holds that Beasleyôs term of office extends from when he was elected, until the directorôs successor is elected. Tex. Bus. Org. Code § 21.407. As all subsequent boards have been illegally constituted, Beasley remains an elected member of the board ï and has standing under Texas law (as a member and board member) to challenge the ultra-vires acts of SIM Dallas and its

officers or directors from when Beasley was and continues to be acting in the best interest of SIM Dallas. Tex. Bus. Org. Code §§ 20.002(c)(1); 21.522(1)(A).

39. Breach of Contract. Beasley was but a volunteer, providing his time for years in support of the organization. By agreement, at worse, if for some reason Beasley could not fulfill his duties, SIM Dallas had agreed to ask for his resignation, and he had agreed to resign. But instead of giving Beasley the professional courtesy offered to most elected officials and abide by its agreement, SIM Dallas did not ask for Beasleyôs resignation, but instead sought to defame and expel Beasley.

40. Illegal Distribution of Member Assets to Member, Peter Vogel. Rather than simply resolve the dispute, SIM Dallas, controlled by Burns and OôBryan, wasted the assets of the organization by mounting an unconscionable legal defense, wasting over $422,000, in mounting and continuing legal fees. Their legal actions, to cover-up their own personal faults, included filing completely groundless, frivolous pleadings, having 2 and 3 lawyers needlessly attend depositions, and wasting court resources by removing the lawsuit to federal court, for it only to be remanded back to state court.

41. SIM Dallas relies on attorney Peter Vogel for legal services; however Peter Vogel is a member of the organization, therefore with a personal interest in the outcome of the case. February 27, 2016, plaintiff asked for Mr. Vogelôs voluntary withdrawal of the case, but he refused.

42. Further, attorney Peter Vogel claims he can represent the organization, represent all of its members, represent Peter Beasley, and represent himself all within the same lawsuit ï which have conflicting interests, which violate his professional responsibilities as an attorney. Attorney Peter Vogel has represented one faction of the board, against another, which violates his professional responsibilities as an attorney. He has failed in his obligation to ensure that the Texas corporation operates within its governing documents.

43. SIM Dallas, with the advice of attorney Peter Vogel, refused at every juncture offered by Beasley to meet to try and resolve the dispute. In February and March 2016, Beasley asked to meet with OôBryan to ñclear the airò and resolve the dispute, but she failed to meet. March 24, 2016, Beasley offered to meet a resolve the dispute, but SIM Dallas, via e-mail by Peter Vogel, refused to meet. April 4, 2016, Beasley asked board member Kevin Christ to inquire if SIM Dallas would meet to resolve the dispute, but they refused. And in Dallas District Court, the trial judge

ordered the parties to mediation by October 6, 2017, but SIM Dallas would not make themselves available to meet.

44. To stop the mounting legal fees, on both sides, Beasley nonsuited his lawsuit, *without prejudice*, on October 5, 2017, as no counter-claims were pending against him. But after the Dallas court dismissed the case, SIM Dallas, pursued a completely void award of $211,031 against Beasley, forcing again more legal action in appellate court.

45. Peter Vogel, him being a member, advising SIM Dallas into an unreasonable course of litigation, leads to an illegal violation of Texas law, with SIM Dallas transferring memberôs assets to one of its members. Tex. Bus. Code § 22.054 (1), with the potential to lead the Chapter into insolvency. Beasley seeks to have the attorney client relationship, if it actually exists, with member Peter Vogel, enjoined. Tex. Bus. Code § 20.002 (d).

46. Defamation and Tortuous Interference. Rather than resolve the dispute, SIM Dallas embarked on a campaign to defame and disparage Beasley and his software company, Netwatch Solutions, and to tortuously interfere with business and contractual arrangements. Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, **February 5, 2018**, and at other times in meetings and publications to 3rd parties.

47. SIM Dallas has refused since February 2016 to the date of filing this amendment (February 22, 2018) to meet to mediate or try and resolve the dispute.

48. The damages caused by SIM Dallas are on-going and continue to mount now well past the $1,000,000 mark.

49. Legal fees claimed or owed now are crossing beyond $900,000.

50. Beasley attempted to stop the mounting legal fees and damages with a nonsuit, but SIM Dallas keeps the dispute going ï now with attorneys, like OôBryan and Burns, keeping the fight going to hide their own wrongdoing and malfeasance.

51. Burns and OôBryan are not acting in the best interest of SIM Dallas in authorizing over $500,000 in legal fees and a litigation strategy to cost millions in damages to innocent customers, employees and IT professionals across North Texas.

52. SIM Dallas, and its illegally constituted Board and errant leadership under Burns and OôBryan systematically violate the laws of this State, its own bylaws, and are in effect stealing the funds of the Texas non-profit corporation for personal gain.

53. OôBryan and Burns could easily have convened a meeting of the members in April 2016, either to attempt to remove Beasley from the Board (although no grounds for removal existed), or could have amended the Articles of Incorporation or Bylaws, or direct the Board to stop itôs discriminatory membership practices so as to remove the source of the underlying conflict ï 1) the substantial give away of memberôs assets to non-members in the name of philanthropy and 2) its discriminatory membership practices.

54. However, OôBryan and Burns did not do so. As the Board does not have the power to remove one of its own, they moved, at Burnsôbehest, to expel Beasley as a member. However, a membership in SIM is not a prerequisite for Board membership. Therefore, Beasley remained a member of the Board. Nevertheless, OôBryan and Burns caused the Board to ignore his membership, refused to invite him to meetings, and took the illegal position that Beasley had effectively been removed from the Board.

55. SIM Dallas went as far as to pay for and bring an armed peace officer to the next Board meeting to ensure Beasley remained excluded.

56. Malice. SIM Dallas acted with malice, with a specific intent to hurt Beasley, with an admission to ñnot be niceò and to hurt Beasley in his name, and through his company. As malice, SIM Dallas simply breached a sponsorship contract with Beasleyôs company, and refused to refund the sponsorship fee.

57. SIMôs malice toward Beasley began in 2016 and extends into 2018, with SIM stooping so low as to meet with employees of Beasleyôs company, Netwatch Solutions, to undermine Beasley and his companyôs ability to generate revenue and service its customers.

VI. CAUSES OF ACTION

A. Count 1 – Breach of Contract Against SIM Dallas

58. The Board Agreement, bylaws of the corporation, and oral representations formed a valid contract between Beasley and SIM Dallas. SIM Dallas offered that Beasley serve on the SIM board of directors, at his own personal liability to do so.

Beasley accepted that offer and served on the board in 2013, 2014, 2015, and 2016. SIM Dallas breached that agreement a) when the President felt Beasley was not fulfilling his duties, but failed to ask for Beasleyôs resignation, b) failing to follow its bylaws with respect to Beasley, b) and when a legal dispute occurred, failed to cover Beasleyôs legal expenses in support of the organization with SIM Dallasô insurance carrier. Beasley relied on that agreement, served as a member of the board, and acted in the best interest of the organization with the knowledge that his resignation would be requested if he was not fulfilling his duties, and that his actions to protect the members would be covered by insurance. As a result of SIM Dallasô breach, Beasley has incurred damages.

59. Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

B. Count 2 – Fraudulent Inducement Against SIM Dallas

60. Or in the alternative to Count 1, SIM Dallas induced Beasley to serve on the board with the false representation that he would be asked to resign if his performance was improper, and that his actions on behalf of the organization were covered under SIM Dallasô insurance. The representations by SIM Dallas were false, and SIM Dallas knew the statements were false, or made the false statements without any knowledge of its truth. SIM Dallas made these false statements with the intent that Beasley act upon the false assertions, and Beasley acted in reliance of those false statements. Beasley suffered damages.

61. Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

C. Count 3 – Breach of Contract Against SIM Dallas

62. Peter Beasley paid his membership dues for the 2016 calendar year, but after April 19, 2016, SIM Dallas breached its contract and no longer allowed Beasley to enjoy his benefits of membership.

63. Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

D. Count 4 – Injunction Against Ultra Vires Acts of SIM

64. Plaintiff asserts a derivative claim on behalf SIM. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

65. As pleaded herein, plaintiff has presented these claims to SIM, and SIM refuses to grant redress.

66. Defendant owes duties to SIM Dallas of good faith and due care and to act in the best interests of SIM and its members. Defendant also owes duties of obedience to act in conformity with the organizational documents and law. Defendant has failed to act in good faith, with reasonable care, and in the best interests of SIM Dallas and its members.

a. Injunction ï Appoint a Receiver. Due to SIM Dallas, as controlled by Burns and OôBryan, is unwilling to operate within its bylaws and the laws of this state, and due to it acting in a way to destroy the corporation, Plaintiff seeks the appointment of a receiver, at SIM Dallasô expense, to restore the organization to operate within its bylaws. Further, SIM Dallas, under its current leader, Nellson Burns, is engaging in a litigation defense strategy to defend against his own personal motives, at the expense of the organization, and therefore Plaintiff seeks the appointment of a receiver, at SIM Dallasô expense, to restore the organization to operate within its bylaws.

b. Injunction ï Reinstate Membership and Board Position. The expulsion of plaintiff from membership in SIM Dallas and his removal from the board, as elected by the members, was in violation of the bylaws of SIM Dallas, and implied due process rights and was taken without authority and without a valid organizational purpose. The expulsion and removal is void and ultra vires. Therefore, pursuant to §20.002 of the Texas Business Organizations Code, plaintiff seeks injunctive relief voiding the ultra vires expulsion, and removal, and reinstating his membership, effective as of the date of the purported expulsion. Plaintiff is without adequate remedy at law.

c. Injunction ï Stop Illegal Distribution of Assets to a Member. The contract, if one exists, to obtain services from member Peter Vogel is unreasonable and violates the Texas Business Organizations Code prohibition to not provide dividends to a member. Therefore, plaintiff seeks injunctive relief voiding the ultra vires distribution of member assets to a member.

67. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM Dallasô bylaws and charter. Plaintiff is without adequate remedy at law.

E. Count 5 – Defamation Against SIM Dallas

68. On December 31, 2016, and at other times, SIM Dallas published a statement, and that statement was defamatory concerning Beasley. SIM Dallas acted with malice, and was negligent in determining the truth of the statement. Beasley suffered damages.

69. February 12, 2017, and August 1, 2017, Beasley put SIM Dallas on notice that their false statements were defamatory, and SIM Dallas has refused, in writing on August 18, 2017, to retract the false statements.

70. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

F. Count 6 – Declaratory Judgment

71. A live controversy exists among the parties to this dispute with respect to rights, status, and other legal relations, and Plaintiff requests this Court to issue a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.001 et seq.

a. Declaratory Relief ï Expulsion of Beasley Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIMôs bylaws, violated due process protections under the Texas Constitution and

violated applicable provisions of the Texas Business Organizations Code, such that Beasleyôs purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.

b. Declaratory Relief ï Illegally Constituted Board. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, under the bylaws, all subsequent boards are allowed by approval and vote of the prior board. SIM Dallas failed to allow Beasley to vote on the 2017 and 2018 boards, and therefore those subsequent boards are illegally constituted, and the 2016 board remains the valid board.

c. Declaratory Relief ï Actions of Board Subsequent to Beasleyôs Purported Expulsion are Also Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. After the purported expulsion, Beasley informed SIM that the proceedings were void and that he was still entitled under Texas law to notice of all board meetings, and for the right to attend and vote on the matters of the corporation. SIM ignored this demand and continued and continues to operate in violation of state law by refusing to provide Beasley notice and the opportunity to attend Board meetings and vote on Board business. Beasley seeks a declaratory judgment that all actions of SIMôs Board which required a vote since April 19, 2016, were and are void ï unless subsequently ratified by Beasley.

d. Declaratory Relief ï Beasley Remains an Elected Board Member. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, and in violation of the bylaws, Beasley was never removed, by vote of the members, as a board member, with that

ballot being allowed by the 2016 board on which he served. Under state law, directors serve for their term until another valid election occurs, and since no valid election has since occurred, Beasley seeks a declaration that he remains a member of the elected board.

e. Declaratory Relief ï Boardôs Attempt to Donate and Give Away SIMôs Assets Violates SIMôs Bylaws and Organizational Articles. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. Certain members of SIMôs Board have embarked upon a charitable or philanthropic plan simply to donate or give away SIMôs cash, in significant amounts, to non-members. Beasley seeks a declaratory judgment that SIMôs bylaws and articles of incorporation prohibit such charitable donations of SIMôs assets to benefit non-members.

72. Attorneyôs Fees. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, Beasley requests the Court to award him his costs and reasonable and necessary attorneyôs fees, both for trial as well as for successful defense of any appeals.

G. Count 7 – Violation of Beasley's Due Process Rights Against Defendant SIM

73. As a member of SIM, plaintiff is entitled to due process rights prior to expulsion, including a meaningful right to be confronted with the grounds of his expulsion, the right to be heard, the right to counsel, and protection against decisions that are arbitrary and capricious or tainted by fraud, oppression, and unfairness. As alleged herein, plaintiff was denied his due process rights.

74. Plaintiff is also entitled to a procedure that scrupulously abides by the organizationôs internal bylaws and rules. The notice for the Board meeting to expel Beasley was sent less than seven days prior to the date of the meeting in violation of the Bylaws. Furthermore, the meeting was illegally constituted because almost half the participants attending by telephone. The notice of the meeting did not provide for attendance by phone, and Beasley was not given the opportunity to attend by telephone. Moreover, the meeting was in violation of Tex. Bus. Orgs. Code § 22.002 because Beasley did not consent to the meeting to the meeting being conducted

telephonically. Furthermore, the members physically present did not constitute a quorum.

75. The bylaws and organic documents of a voluntary association constitute a contract between the association and its members. Plaintiffôs due process rights are both explicit provisions of this contract and terms implied by law. By the acts and omissions alleged herein, SIM has breached its contractual duties to plaintiff. Plaintiff has performed his obligations and has been damaged by the breach.

76. Therefore, plaintiff is entitled to a mandatory injunction voiding the expulsion and reinstating his membership and to actual damages resulting from the breach. Plaintiff is without adequate remedy at law.

77. Plaintiff is further entitled to an award of reasonable and necessary attorneyôs fees incurred in this action on a written contract.

H. Count 8 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

78. Beasley had a contractual relationship May 2016, with the law firm of Ferguson, Braswell, Fraser, and Kubasta.

79. On May 8, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasleyôs contract for legal representation.

80. Beasley suffered damages, for which he sues.

81. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

I. Count 9 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

82. Beasley had a contractual relationship August 2016, with the law firm of White and Wiggans.

83. On October 25, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal

representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasleyôs contract for legal representation.

84. Beasley suffered damages, for which he sues.

85. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

J. Count 10 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

86. Beasley had a contractual relationship August 2016, with the law firm of Dan Jones.

87. On December 29, 2016, SIM Dallas, through its agent Soña Garcia, committed the underlying tort of defamation to interfere with an existing legal representation contract. Soña Garcia, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasleyôs contract for legal representation.

88. Beasley suffered damages, for which he sues.

89. SIM Dallasô actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

K. Count 11 – Tortuous Interference with Contractual Relationships Against Defendants SIM Dallas and Nellson Burns

90. From October 2014 through March 2016, Peter Beasley, through the company he owned 100%, Beasley, had an ongoing contractual and business relationship with Holly Frontier Corporation (HFC), the employer of Nellson Burns ï by virtue of his personal building access badge and network login account to HFCôs computer network.

91. Based on the dispute within SIM about their bylaws, Burns, acting solely in bad faith, with animosity toward Beasley, outside the scope of his legitimate duties as an officer of HFC, and in furtherance of SIMôs desire and intent to punish Beasley

for his opposition to the SIM Boardôs improper use of organizational funds, interfered with the contract and business relationship between Beasley / Netwatch and HFC, caused HFC to shut down Beasleyôs access to HFCôs computer system, and caused HFCôs employees not to communicate with Beasley.

92. **October 2017, HFC ultimately terminated Nellson Burns as their Chief Information Officer for his interference and for embroiling them in this fight.**

93. As a direct and proximate result of Burnsô wrongful and tortious interference with the contractual and business relationship between Netwatch and HFC, Beasley has sustained actual damages in an amount to be determined at trial.

94. Burnsô actions, individually and as an agent of SIM Dallas were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas and Burns in an amount to be determined at trial.

L. Count 12 – Business Disparagement Against Defendants SIM

95. As 100% owner of Netwatch Solutions Inc., Beasley has standing to bring forward a business disparagement claim without the formal intervention of Netwatch Solutions Inc.

96. From March 2016, to the present, SIM Dallas has published disparaging words about Netwatchôs economic interests.

97. The disparaging words were false or in some instances false by implication or innuendo.

98. SIM Dallas published the false and disparaging words with malice.

99. SIM Dallas published the words without privilege and had a requisite degree of fault.

100. As a direct and proximate result of SIM Dallasô disparagement, Netwatch has incurred general damages to its reputation and special damages in the form of lost revenue and profits from its relationship with HFC, lost business opportunities with SIM members, lost profits, and a diminution in the value of Netwatch as a going concern. Netwatch has incurred losses in expenses incurred trying to restore Netwatchôs reputation.

101. SIM Dallasô actions were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

M. Count 13 – Breach of Duties/Ultra Vires Acts Against Defendants Burns and O'Bryan

102. Plaintiff asserts a derivative claim on behalf SIM Dallas. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

103. As pleaded herein, plaintiff has presented these claims to SIM Dallas, and SIM Dallas refuses to grant redress. Furthermore, any other demand would be futile because SIM Dallas is controlled by OôBryan and Burns.

104. Defendants Burns and OôBryan owe duties to SIM of good faith and due care and to act in the best interests of SIM Dallas and its members. Defendants also owe duties of obedience to act in conformity with the organizational documents and law. Defendants have failed to act in good faith, with reasonable care, and in the best interests of SIM and its members.

105. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIMôs bylaws and charter against Burns and OôBryan and award actual damages 1) in at least the amount of membership funds wrongfully distributed to non-members, 2) any funds wrongfully distributed to attorney Peter Vogel, 3) any SIM Dallas funds paid in the individual defense of the lawsuit between Nellson Burns and Netwatch Solutions, 4) and all costs and attorneyôs fees incurred by SIM Dallas in the defense of the ultra vires and illegal actions of SIM Dallas which Nellson Burns and Janis OôBryan pursued. Plaintiff is without adequate remedy at law.

106. Plaintiff further requests that SIM Dallas be awarded its attorneyôs fees incurred in this derivative action pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 because the Articles and Bylaws constitute a contract among the corporation and its members, and Burns and OôBryan have breached that contract by their actions alleged herein. Plaintiff requests under the principles of equity that any attorneyôs fees awarded be distributed to him personally to avoid unjust enrichment and because this action has conferred a substantial benefit on the corporation.

VII. ATTORNEY FEES

107. Plaintiff seeks to recover attorney fees as authorized under declaratory judgment, fraud, and breach of contract statutes.

VIII. CONDITIONS PRECEDENT

108. All conditions precedent to plaintiffôs claim for relief have been performed or have occurred.

IX. CONCLUSION AND PRAYER

109. For these reasons, plaintiff asks that the Court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

a. Actual damages.

b. Declaratory Judgment.

c. Injunctive Relief.

d. Appointment of a Receiver.

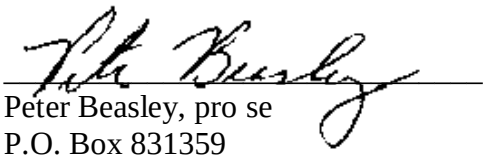
e. Prejudgment and postjudgment interest.

f. Court costs.

g. Attorneyôs fees and costs as are equitable and just.

h. All other relief to which plaintiff is entitled.

Respectfully submitted,



Peter Beasley, pro se
P.O. Box 831359
Richardson, TX 75083-1359
(972) 365-1170,
pbeasley@netwatchsolutions.com

Tab C

EXHIBIT C

DENY and Opinion Filed May 15, 2019.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00422-CV

IN RE PETER BEASLEY, Relator

Original Proceeding from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278

MEMORANDUM OPINION

Before Justices Myers, Molberg, and Nowell
Opinion by Justice Molberg

In this original proceeding, relator complains of the trial court's December 11, 2018 order granting a motion to declare relator a vexatious litigant. In the order, the trial court granted the motion, declared relator a vexatious litigant, ordered relator to post a $422,064.00 bond as security pursuant to section 11.055 of the civil practice and remedies code, and ordered that the case be dismissed with prejudice if relator failed to post the bond within thirty days of the December 11 order pursuant to section 11.056 of the civil practice and remedies code. The order also prohibits relator from filing any new, pro se lawsuits in Texas without first receiving permission from the appropriate local administrative judge pursuant to section 11.101 and 11.102 of the civil practice and remedies code. Relator seeks a writ of mandamus directing the trial court to vacate the December 11 order.

Mandamus is an "extraordinary remedy, not issued as a matter of right, but at the discretion of the court." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). It is a means for correcting blatant injustice that will otherwise escape appellate review. *In re Reece*, 341 S.W.3d 360, 374 (Tex. 2011) (orig. proceeding). A relator seeking relief by mandamus has the burden of establishing the trial court clearly abused its discretion and he has no adequate remedy by appeal. *In re Prudential*, 148 S.W.3d at 135–36. "An appellate remedy is 'adequate' when any benefits to mandamus review are outweighed by the detriments." *Id.* at 136.

Based on the record before us, we conclude relator has not shown he is entitled to the relief requested because he has an adequate remedy by appeal. Relator had a right to appeal the portion of the order requiring relator to obtain permission to file new lawsuits in Texas because pre-filing orders are subject to interlocutory appeal. TEX. CIV. PRAC. & REM. CODE ANN. § 11.101(c); *Nunu v. Risk*, 567 S.W.3d 462, 466–67 (Tex. App.—Houston [14th Dist.] 2019, Rule 53.7(f) motion granted) (collecting cases and concluding section 11.101(c) authorizes an interlocutory appeal of a pre-filing order). As for the portion of the order declaring relator a vexatious litigant and requiring him to post a bond, relator has not shown why an appeal of that order provides an inadequate remedy. *See In re Balistreri-Amrhein*, No. 05-18-00633-CV, 2018 WL 2773263, at *1 (Tex. App.—Dallas June 11, 2018, orig. proceeding) (denying petition seeking vacatur of order declaring relator vexatious litigant because record was incomplete and relator had an adequate remedy by appeal) (citing *In re Jackson*, No. 07–15–00429–CV, 2015 WL 8781272, at *1 (Tex. App.—Amarillo Dec. 11, 2015, orig. proceeding) (mem. op.) (mandamus denied because relator had adequate remedy by appeal where vexatious litigant order would not render upcoming trial null or wasteful and order would not evade appellate review)). Accordingly, we deny relator's

petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Ken Molberg/
KEN MOLBERG
JUSTICE

190422F.P05

EXHIBIT C

Tab D

EXHIBIT C

Cause No. DC-18-05278

PETER BEASLEY, PLAINTIFF, v. SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; and NELLSON BURNS DEFENDANTS.	≈	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS 162nd JUDICIAL DISTRICT

Plaintiff's 1st Amended Response to Defendant's Vexatious Litigant Motion, Motion for Sanctions and Request for Findings of Fact

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Plaintiff, Peter Beasley, and files this 1st Amended Response to Defendant's April 19, 2018, Vexatious Litigant Motion, with their supplements from May 14, and July 5, 2018, and brings forward a Motion for Rule 13 Sanctions and a Request for Findings of Fact:

1. Peter Beasley, in no way, is a vexatious litigant.

2. To the contrary, Mr. Beasley is an experienced, very accomplished litigant, who, with and without the use of counsel, follows the rule of law, seeks to resolve conflicts through mediation, minimizes the cost of legal disputes, and who fervently defends his American-born civil rights:

   a. to petition the courts,

   b. to appear pro se or with counsel, and

   c. to enjoy due process and due course of law.

3. **If Beasley sues, defends a lawsuit, or otherwise engages in a legal proceeding, with or without counsel, he often prevails or obtains meaningful benefits**.

4. However, Mr. Beasley is not a lawyer. He does not have a formal legal education and, quite admittedly, he has faced monumental adversity in a few legal proceedings when faced with abusive opposing counsel who tell lies and who shirk their professional responsibilities.

MOTION FOR SANCTIONS

5. Defendant's vexatious litigant motion is groundless, non-timely, barred for many reasons, and presented solely for the purpose of a delay, for which sanctions should lie. Tex. R. Civ. P. 13.

6. In particular, **Defendant's 1st and 2nd Supplemental Motions are utterly groundless**.

7. Defendants filed their motion on April 19, 2018, that being 93 days after filing an Answer, and set the motion for a hearing on July 19, 2018; **over 90 days later** – imposing an automatic stay in the proceedings, for no other purpose but for an impermissible delay to avoid discovery.

8. In violation of Rule 88, Defendants sought to prevent answering Plaintiff's discovery requests by filing a Motion for a Protective Order on February 16, 2018 – requesting the court:

> "issue an order protecting Defendants from discovery **while *Defendants' Motion to Transfer Venue is pending***."

9. The motion to transfer venue was decided on April 18, 2018 – which eliminated defendant's grounds for protection. So, on April 19, Defendants filed a groundless "vexatious litigant" motion — to further seek an improper resistance to discovery.

10. In keeping with their obstructionist tactics to further avoid discovery, now violating both the civil rules of procedure[1] and criminal laws[2] of this state, defendants have also ignored Beasley, as a private citizen's requests for records of a Texas non-profit corporation under the Non-Profit Corporation Act. Tex. Bus. Org. Code § 22.353.

---

[1] Discovery shall not be abated or otherwise affected by pendency of a motion to transfer venue. Tex. R. Civ. P. 88.
[2] Misdemeanor to refuse to provide requested records. Tex. Bus. Org. Code § 22.354.

11. **The Society of Information Management will one day have to answer for their bad acts, in this forum or under scrutiny by the media**.

12. Defendants and their counsel, as listed contemporaneously in this document, use intentionally false legal arguments, proffer false facts, and take impermissibly inconsistent legal positions to perpetrate their improper delay in the discovery process.

13. Defendants and their counsel should be sanctioned. Tex. R. Civ. P. 13; 215.2(b).

REQUEST FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW

14. The vexatious litigant statute provides a careful balancing of rights of the individual against the rights of the public. As such, the specifics of the statute must be specifically followed, and courts are required to make evidentiary findings of fact to uphold any judgment of vexation. *Willms v. Americas Tire Co.*, 190 S.W.3d 796, 801 (Tex. App.-Dallas 2006, pet. denied).

15. Plaintiff requests findings of facts and conclusions of law pursuant to Rule 296.

16. If defendant's motion were to be upheld, plaintiff requests specific findings of fact that:

a. Defendant's January 16, 2018, Motion to Transfer Venue was an Answer to the foregoing lawsuit.

b. Defendant's April 19, 2018, vexatious litigant motion was filed beyond the 90-day limit provided by statute.

c. Defendants paid plaintiff's filing fee required by the Dallas District Clerk to institute the lawsuit against the defendant in Dallas District Court.

d. Defendants provided no conclusive evidence that Beasley had no probability to prevail on all of his claims in this lawsuit.

e. State which grounds under the vexatious litigant statute the court found as meeting the requisite criteria.

17. If defendant's motion were to be denied, plaintiff requests specific findings of fact that:

a. Defendant's alleged grounds under C.P.R.C. § 11.054(1) in ¶ B, page 17, in their April 19, 2018 motion, filed by their counsel, rely on false facts and false legal arguments.

b. Defendant's alleged grounds under C.P.R.C. § 11.054(2) in ¶ C, page 19, in their April 19, 2018 motion rely on false facts and false legal arguments.

c. Defendant's April 19, 2018, vexatious litigant motion filed by their counsel, was groundless, for the purpose of delay.

d. Defendant's May 14, 2018 added supportive facts in their 1st Supplement to the vexatious litigant motion filed by their counsel, were irrelevant and groundless.

e. Defendant's July 5, 2018 added supportive facts in their 2nd Supplement to the vexatious litigant motion, filed by their counsel, were irrelevant and groundless.

f. Defendant's and their counsel filed their vexatious litigant motion and supplements for the purpose of delay.

DEFENDANT'S VEXATIOUS LITIGANT MOTION IS GROUNDLESS

Introduction

18. Defendant's motion is not timely filed – filed after the 90-day deadline.

19. Defendant's motion is estopped by their own arguments and inconsistent actions.

20. Defendant's motion is groundless as they have sued the Plaintiff, making him a defendant.

21. There are no grounds to find plaintiff vexatious.

a. Defendants cannot show there is no probability Beasley can prevail.

b. CPCR § 11.054 (1) fails.

c. CPCR § 11.054 (2) fails too.

22. Defendants unconstitutionally attempt to use the vexatious litigant statute against Beasley to summarily dismiss his lawsuit.

23. Opposing counsel have no authority to defend this lawsuit nor to bring this claim.

The Motion is Not Timely Filed

24. When answering a lawsuit, a defendant may make a special or general appearance. Rule 120a defines a "special appearance" and Rule 85 defines the contents of an "answer".

25. By rule, defendants answered the lawsuit by making a general appearance on January 16, 2018, by filing a motion to transfer venue. Tex. R. Civ. P. 85.

26. The vexatious litigant statute defines, "On or before the 90th day after the date the defendant files the original answer or makes a special appearance", a defendant may file a motion to declare a plaintiff as vexatious. Tex. Civ. Prac. & Rem. Code § 11.051.

27. Defendant's January 16, 2018, motion to transfer venue was an answer making April 16, the deadline after which defendants could no longer file vexatious litigant motions. *Id*.

28. In result, Defendant's April 19, 2018, vexatious litigant motion was not timely, it being filed 93 days after their answer, *See*, *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex.App.-San Antonio 2000, no pet.) (holding section 11.051 motion filed outside ninety-day period was untimely), where nothing implies that a defendant must first "answer". *See*, *Brown v. Tex. State Bd. of Nurse Examiners*, No. 03-05-00508-CV, 2007 WL 3034321 (Tex. App.-Austin, Oct. 18, 2007, pet. denied).

29. Defendant's April 19, motion was too late.

30. These defendants should also not garner any sympathy for being late.

31. In June 2016, defendants tried unsuccessfully to "declare" plaintiff as vexatious, but withdrew the motion before the court ruled against them in a hearing, with lead counsel Bragalone saying:

> MR. BRAGALONE: And Judge, we do have a problem with the vexatious litigant statute. I argued this earlier. I know it's not terribly relevant, but if you'll just allow me to remind you. You can't discover that you're defending a Peter Beasley in 90 days. And there's a flaw in the statute. But we had to withdraw because we didn't get the motion on file --

32. Now, defendants cannot complain about being late – where they could have filed the vexatious litigant motion on "Day One" of being sued in Collin County. Instead, in a fashion that defendants believe ONLY JUDGE MOORE WOULD GRANT THEIR MOTION, they did not bring the claim to Judge Wheless, Judge Roach, or to Judge Goldstein.

33. The motion is not timely and should be denied.

34. Further, defendants and their counsel know the motion is late – as they tried once before getting around not bringing a timely motion. Defendant's claim is barred by their own arguments. Their motion is not timely filed.

35. Further, the untimely motion was filed solely for a delay and to avoid the discovery process. Sanctions should lie against them. Tex. R. Civ. P. 13.

Defendants are Estopped from Bringing the Claim

36. Even if the motion were timely filed, defendant's claim is estopped by defendants paying plaintiff's transfer fee (in Collin County) and paying plaintiff's filing fees (in Dallas County), where they cannot now complain of being sued vexatiously. A party is estopped from complaining of error in the trial court when the error occurred at the party's request. *See Shafer v. Bedard*, 761 S.W.2d 126, 129 (Tex.App.— Dallas 1988, orig. proceeding). All but for defendant's consent, them paying the transfer and filing fees they now find themselves sued in Dallas County.

37. Defendant's vexatious litigant claim is barred by the doctrine of consent.

38. Defendant's vexatious litigant claim is further barred by the doctrine of laches. Based on defendant's delay and choice to litigate various issues in Collin County, and not immediately file the vexatious litigant motion, plaintiff did not file a motion for summary judgment to defeat the counter-claim nor to advance his claims.

Defendants have Sued Plaintiff; There is No Such Thing as a Vexatious Defendant

39. A careful examination and hearing will show that Defendants (and their counsel) are the protagonists of this dispute – not the plaintiff.

40. Before the case was ordered transferred to Dallas County, no defendant while the action was in Collin County moved to find Beasley a vexatious litigant.Also while in Collin County, defendant Nellson Burns counter-sued Beasley, making Beasley a counter-defendant.

41. But Beasley did not pay the transfer fee or pay to refile his lawsuit in Dallas County. **Beasley did not file this lawsuit in Dallas County, defendants did**. Beasley has not set any hearings in Dallas County "to maintain" this lawsuit, other than to ensure he has a fair tribunal to

determine the vexatious litigant motion. He has not pursued any discovery, sought to compel discovery, or to seek any orders of the court.

42. **Although Beasley makes no complaint about being placed into Dallas District Court by defendants**, but with them paying the filing fee, in effect made them the party which brought the lawsuit into court. The purpose of Chapter 11 is to restrict frivolous and vexatious litigation. *See Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). The legislature sought to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit. *Willms. Id.* at 804.

43. It is the defendants who filed their counter-suit against Beasley in Dallas County and admittedly filed Beasley's counter-suits against them.

44. There is no provision to hold a counter-defendant vexatious, as the statute clearly provides only for a defendant to find a plaintiff "who commences or maintains a litigation *pro se*" vexatious. Tex. Civ. Prac. & Rem. Code § 11.001(5); 11.051. Beasley is entitled to defend himself, with any compulsory counter-claims, without being declared vexatious and without being required to post security.

Defendants Cannot Complain of Beasley's Actions as a Pro Se Litigant

45. Defendants also cannot complain about Beasley being *pro se* when they actively and systematically obstruct Beasley's ability to have legal representation.

46. The vexatious litigant statute applies only against an individual who commences or maintains a litigation *pro se*. Tex. Civ. Prac. & Rem. Code § 11.001(2).

47. But this lawsuit includes the claim that Defendants have and continue to tortuously interfere with Beasley's ability to obtain counsel.

48. Defendants cannot benefit from a condition they caused to occur.

The Vexatious Litigant Statute is Unconstitutional

49. The statute, on its face and as applied to Beasley, is unconstitutional for various reasons.

a. The definition "'Litigation' means a civil action commenced, maintained, or pending in any state or federal court" **is unconstitutionally vague and overbroad**. Tex. Civ. Prac. & Rem. Code § 11.001(2). A statute prohibiting conduct that is not sufficiently defined is void for vagueness. *In re Fisher*, 164 S.W.3d 637, 655 (Tex.2005); *see Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); *Commission for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex.1998). It is **unclear whether original proceedings or post-judgment actions in appellate courts** ARE OR ARE NOT civil litigations[3]. The Texas Courts of Appeal are split on this determination, which underscores a non-lawyer's ability to meaningfully know the definition of a "*civil litigation*". To succeed on a mandamus action, the relator must show he has no adequate remedy on appeal, and upon that failing he may not be entitled to relief – regardless of whether his claim may ultimately be decided in his favor. Further, the bar is high to show in a mandamus action that a judge abused his or her discretion or had a ministerial duty to act, but failed. Again, a *pro se* relator's misunderstanding of the standard for appellate review may not be a sign of vexation, but merely that of making an error at law. It is unconstitutional that a mistake in the law by a non-lawyer is penalized differently than a mistake in the law by a person who has the benefit of a formal legal education. It will often be unclear to a litigant, or even to a determining court, that a failed mandamus action is a "civil litigation" that counts toward the vexatious litigant standard. The courts of appeal have inherent authority to sanction any litigant that abuses the judicial process, or one who file groundless petitions, or one who makes misleading

[3] Courts are free to ignore legal holdings from other states. *Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296 (Tex. 1993).

statements, Tex. R. App. P. 52.11. The appellate courts are in the exact position to determine if an original proceeding should count as being vexatious. Further, by their discretionary nature and without the requisite right to an appeal mandated by the Texas Constitution[4], an original proceeding does not clearly meet the definition of a 'civil litigation', which guarantees at least one appeal in every controversy at law. A statute is unconstitutionally overbroad statute if it "sweeps within its scope a wide range of both protected and non-protected expressive activity." *Hobbs v. Thompson*, 448 F.2d 456, 460 (5th Cir.1971). The court determining whether a litigant is vexatious is not in a position to determine if an original appellate proceeding was filed in good faith, whether it was not frivolous, or whether it was denied for a filing error or denied simply due to making an error at law. Lastly, the petition would need to be granted, but then relief denied to be finally adversely determined against the plaintiff. A denied petition for mandamus is rarely a final determination (i.e. with prejudice), unless stated in the accompanying opinion, as by their very definition, the petition may be refiled in the Court of Appeals or the Supreme Court, or the issue pursued later on a direct appeal.

b. The definition "'Litigation' means a civil action commenced, maintained, or pending *in any state or federal court*" is **unconstitutionally overbroad**. *See*, *Id*. Tex. Civ. Prac. & Rem. Code § 11.001(2). All litigants are free to use the laws of the courts in every U.S. jurisdiction to advance their claims, when done in good faith. **The Texas Legislature is without authority to penalize a litigant's actions in a legal proceeding in Illinois, another state** – Cook County in particular. The vexatious litigant statute exempts actions in municipal court and small claims court, but what about Cook County Chancery Court, Cook County Circuit Court, and Cook County Probate Court, and the bazillion other courts and tribunals in Texas and in other states and

[4] Tex. CONST., art. V.

within the federal government – a federal patent prosecution, defense of a tax liability in U.S. tax court, a federal bankruptcy, defense of an employee's right to unemployment, pursuit of a Texas attorney general's opinion, defense of a sales tax liability, or civil actions with the State Board of Disciplinary Appeals or with the State Commission on Judicial Conduct? The Texas Legislature is clearly without knowledge of the checks and balances and due process afforded Texas litigants in other jurisdictions. The Texas vexatious litigant statute, by considering legal actions outside of their jurisdiction, is unconstitutionally overbroad.

c. The definition "'Plaintiff' means an individual who commences or maintains a litigation pro se" **is unconstitutionally vague**. It could not be clear that Beasley, serving as a probate administrator representing the Heirs in his uncle's estate in Illinois could be classified as a being *pro se*.

d. The phrase "finally determined adversely to the plaintiff" **is unconstitutionally vague**. Tex. Civ. Prac. & Rem. Code § 11.054(1)(A). An action dismissed for want of jurisdiction, dismissed for lack of subject matter jurisdiction under an exception, remanded from federal court to state court, removed from state court to federal court, dismissed without prejudice, dismissed for improper venue, dismissed with prejudice to affect a settlement agreement, denied but on appeal, denied with time yet to appeal, denied but interlocutory, or for which **provides some benefit** to plaintiff cannot be reasonably ascertained as *conclusively being finally determined adverse to the plaintiff*. e.g. *see*, ¶ 71, *supra*. **Suing to effect a settlement or to prevent future aggression are legitimate purposes of litigation**.

Plaintiff's Claims are Meritorious – 1st Prong Cannot Be Met

50. Defendants have not and cannot show that plaintiff has no reasonable probability of prevailing in all of his claims. They attempt to misstate and minimize plaintiff's claims.

51. Defendants, only in the 162nd Dallas District Court before Judge Moore, attempt to use the "vexatious litigant" label as a mechanism to *summarily* win this lawsuit and dismiss Beasley's claims. However, the vexatious litigant statute is not a substitute for special exceptions, summary judgments, and motions to dismiss or for declaratory actions – with their protections of notice, affording due process, allowing hearing, and with determinations on the merits or applicable rules to dismiss a claim. Under the guise of a mere hearing, this court is without authority to usurp the due process protections of Rule 91a (to dismiss a claim), Rule 166a (for summary judgment), or of Rule 91 to afford a plaintiff to replead and state a valid claim.

52. In the vexatious litigant hearing, Beasley is not required to prove each and every element of his claim; the burden is on Defendants, and they have no final judgments (i.e. for res judicata purposes) to support their claim, where even their tortured reading of the November 3, 2017, attorney fee order ("prevailing party on *Peter Beasley's declaratory judgment claims* act") provides defendants no affirmative benefit against any subsequent litigation.

53. Defendant Nellson Burns has not prevailed on his claim against Beasley.

Burns' Claim	Final Prior Judgment	Probability of Success
Defamation. Alleging Beasley falsely claimed Burns was fired from his employment at HollyFrontier Corporation because of this underlying conflict.	No prior determination.	Burns has no probability of success. Beasley merely repeated statements Burns' own lawyer stated in open court.

54. Contrary to what defendant's claim, SIM Dallas has not already prevailed on Peter Beasley's declaratory claims, and defendants claim is false, for which they should be sanctioned. Tex. R. Civ. P. 13. Further, Defendant's ongoing refusal to provide discovery responses undermines their argument that Beasley cannot prevail, and in fact suggests the opposite.

Beasley's Claim	Final Prior Judgment	Probability of Success
Breach of Contract	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Fraudulent Inducement	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Breach of Contract	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative injunctive claim to appoint a receiver.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative injunctive to prevent distribution of member's dues to non-members.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Tortious interference with Beasley's contract for legal representation.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative claim that Janis O'Bryan pay money to SIM.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative claim that Nellson Burns pay money to SIM.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Declaratory judgment – expulsion was void.	None.	Available.
Declaratory judgment – illegally constituted board.	None.	Available.
Declaratory action that all actions by the illegally constituted board are void.	None.	Available.
Declaratory action that Beasley is still a SIM Director.	None.	Available.
Declaratory judgment that substantial give-away of member's assets to non-members are ultra-vires acts.	None.	Available.
Denied due process in expulsion.	None.	Available.
Defamation.	None. New claims.	Available. Relies on questions of fact for a jury to decide.

Tortious interference with business contract.	None.	Available. Relies on questions of fact for a jury to decide.
Business disparagement.	None.	Available. Relies on questions of fact for a jury to decide.
Claim for attorney fees.	None. New claim.	Available. Relies on questions of fact for a jury to decide.

55. The request to find plaintiff vexatious should be denied, *with prejudice*, as plaintiff's claims are sustainable and will be found meritorious.

Vexatious Litigant Criteria § 11.054(1) Fails

56. The vexatious litigant statute serves to protect litigants from plaintiffs who repeatedly sue a defendant who has already prevailed against the plaintiff. None of defendant's cited prior litigations show a pattern of vexation – *against a defendant*.

57. There is no vexatious history of five litigations in the preceding seven years before the filing of the motion that have been finally determined adversely to the plaintiff. The review period would be **April 19, 2018 back to April 20, 2011**.

Defendant's Claim	Outcome	Relation to § 11.054(1)
#1. Peter Beasley v. Susan M. Coleman; Randall C. Romei, Case No. 1:13cv1718 in the USDC Northern District of Illinois. March 6, 2013. 42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and attorney malpractice claims.	Dismissed for want of subject matter jurisdiction – Probate Exception to federal jurisdiction; remanded to state court.	Not relevant because: • Not finally determined adversely to Beasley • Not representing his own interests[5] • Unconstitutional to count a litigation in another jurisdiction other than Texas state court

[5] In *propria persona* is synonymous with *pro se*. In *propria persona* is defined as: in one's own proper person. *Coyle v. State*, 775 S.W.2d 843, 845 (Tex.App.-Dallas 1989, no pet.); Black's Law Dictionary 712 (5th ed.1979).

#2. Peter Beasley v. John Krafcisin; John Bransfield; Ana-Marie Downs; Hanover Insurance Company, Case No. 3:13cv4972 in the USDC Northern District of Texas. December 20, 2013. 42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and declaratory judgment claims.	Dismissed for want of subject matter jurisdiction – Younger abstention to federal jurisdiction and improper venue.	Not relevant because: • Not finally determined adversely to Beasley • Unconstitutional to count a litigation in another jurisdiction other than Texas state court
#3. Peter Beasley v. Seabrum Richardson and Lamont Aldridge, Cause No. DC-13-13433 in the 192nd Judicial District Court of Dallas County, Texas. Breach of contract.	Voluntary nonsuit. Dismissed, with prejudice.	
#4. In re: Peter Beasley, No. 05-15-00276, Texas Fifth Court of Appeals. March 10, 2015. Seeking to void the court's order to set-aside deemed admissions the day before trial over ten months after they were deemed, when Defendant admitted conscious indifference, Defendant had pursued no discovery during the discovery period, Defendant had not responded to Plaintiff's discovery, Defendant had ignored the court's orders, and Plaintiff demonstrated he would be prejudiced if the admissions were stricken over a year after the underlying tort had occurred.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley • Unconstitutional to count a discretionary original proceeding

#5. Peter Beasley v. Society for Information Management, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas. March 17, 2016. Declaratory judgment, due process, business disparagement, and tortious interference claims.	Voluntary nonsuit – dismissed without prejudice. Currently under appeal.	Not relevant because: • Not finally determined adversely to Beasley – DIRECT APPEAL PENDING • Not maintained two years before a nonsuit[6] • Benefit of counsel[7]
#6. In re: Peter Beasley, No. 05-17-01365-CV, Texas Fifth Court of Appeals. November 29, 2017. Seeking to vacate Judge Moore's arguably void November 3rd attorney fee order	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal IS PENDING[8] • Post-judgment appeal. • Unconstitutional to count a discretionary original proceeding
#7. In re: Peter Beasley, No. 17-1032, Supreme Court of December 18, 2017. Seeking to vacate Judge Moore's arguably void November 3rd attorney fee order	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal IS PENDING[8] • Post-judgment appeal. • Unconstitutional to count a discretionary original proceeding
#8. In re: Peter Beasley, No. 05-18-00382-CV, Texas Fifth Court of Appeals, filed on April 5, 2018. Seeking to vacate Judge Roach's transfer of venue to	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not finally determined adversely to Beasley before April 19, 2018.

[6] *See*, *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 700 (Tex. App.-El Paso 2011, no pet.) (counting only involuntary dismissals)
[7] *See*, *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex.App.-San Antonio 2000, no pet.)
[8] *Goad v. Zuehl Airport Flying Community Owners Ass'n, Inc.* No. 04-11-00293-CV (Tex.App.—San Antonio, May 23, 2012, no pet.)("an appeal of a judgment in a civil action is not a separate "litigation" as that word is used in Chapter 11"). The statute by its terms does not apply to post-judgment proceedings. *See*, *In re Florance*, 377 S.W.3d 837, 839 (Tex. App.-Dallas 2012, orig. proceeding).

keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.		• Unconstitutional to count a discretionary original proceeding
#9. In re: Peter Beasley II, No. 05-18-00395-CV, Texas Fifth Court of Appeals. April 8, 2018. Seeking to require Judge Roach's to allow a Rule 12 challenge to defendant's attorneys and keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not finally determined adversely to Beasley before April 19, 2018. • Unconstitutional to count a discretionary original proceeding
#10. In re: Peter Beasley III, No. 05-18-00553-CV, Texas Fifth Court of Appeals. May 14, 2018. Seeking to require Judge Moore to grant or refer a disqualification and recusal motion.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not commenced before April 19, 2018. • Unconstitutional to count a discretionary original proceeding
#11. In re: Peter Beasley IV, No. 05-18-00559-CV. May 15, 2018. Seeking to vacate Judge Goldsteins' transfer of venue to keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.	Petition not granted and then denied, simply denied (i.e. without prejudice).	Not relevant because: • Not finally determined adversely to Beasley – remedy available by appeal • Not commenced before April 19, 2018. • Unconstitutional to count a discretionary original proceeding

58. The request to find plaintiff vexatious under CPCR § 11.054(1) fails and should be denied, ***with prejudice***.

59. There can be no doubt that litigations #5 - #11 are inapplicable, are based on false facts, and are made with patently false legal arguments. Sanctions should lie. Tex. R. Civ. P. 13.

Vexatious Litigant Criteria § 11.054(2) Fails Too

60. No claim has been finally determined against the plaintiff in favor of defendants which plaintiff is relitigating. The only determination in favor of defendants is an order for attorney fees, ***which is not finally determined***, as it is under direct appeal.

a. Plaintiff is not relitigating the validity of the attorney fee order.

b. The attorney fee order does not determine or conclude any claim, controversy, or any issues of fact which plaintiff is relitigating.

61. Further, it is well established law that interlocutory orders on matters that are merely collateral or incidental to the main suit do not operate as res judicata or collateral estoppel. *See Old v. Clark,* 271 S.W. 183, 185 (Tex.Civ.App.- Dallas 1925, no writ). Application of collateral estoppel also requires that there be a final judgment. *See Gareis v. Gordon,* 243 S.W.2d 259, 260 (Tex.Civ.App.- Galveston 1951, no writ). See, Exhibit A.

Defendant's Claim	Prior Final Determination	Relation to § 11.054(2)
#1. Repeatedly litigating and/or attempting to relitigate the claims related to his expulsion.	This issue has NEVER, never, never, EVER been determined.	No re-litigation.
#2. The application of the attorney-client privilege to communications between defense counsel and SIM-DFW.	No final determination – only an *erroneous*[9] interlocutory finding ever existed, which is no longer valid.	No re-litigation.

[9] See, Exhibit A.

#3. "Witness statements" of members of SIM-DFW must be secured via properly noticed depositions.	No final determination – only an *erroneous*[9] interlocutory finding ever existed, which is no longer valid.	No re-litigation.
#4. Recusal of the Honorable Maricela Moore.	**No final determination**	It is absurd to present a legal argument that a denied recusal motion exists into perpetuity.
#5. Disqualification of Peter Vogel as defense counsel	This issue has NEVER, never, never, EVER been determined.	No re-litigation.
#6. Authority for defense counsel to appear as counsel for SIM-DFW, Janis O'Bryan, and Nellson Burns.	This issue has NEVER, never, never, EVER been determined.	No re-litigation.

62. The request to find plaintiff vexatious under CPCR § 11.054(2) fails and should be denied, ***with prejudice***.

63. There can be no doubt that all of these claims are patently false and are made with patently false legal arguments. Sanctions should lie. Tex. R. Civ. P. 13.

Absolutely No Showing of Vexation

64. Certainly, "any person of reasonable intelligence would be able to discern that if he were to file five lawsuits in seven years, all of which were decided in favor of the opposing party or were determined to be frivolous he may be subject to being labeled a vexatious litigant", *See*, *Leonard v. Abbott*, 171 S.W.3d 451, 457-58 (Tex.App.-Austin 2005, pet. denied), but it is not clear that an appellate original proceeding, challenging a court's ruling, to obtain judicial compliance with a ministerial act, or to challenge the law are civil litigations against an opposing party sufficient enough to warrant holding a litigant as being vexatious.

65. Vexatious litigants in this state have been found with 11 identified of **13 claimed failed lawsuits in seven years**, (Steven Aubrey), *See*, *Aubrey v. Aubrey*, 523 S.W.3d 299, 311 (Tex.

App.-Dallas 2017, no pet.), **26 failed lawsuits** (Tom Retzlaff), *See*, *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 702-705 (Tex. App.-El Paso 2011, no pet.) and with decades of religations in many federal, state trial courts and appeals courts (Yvonne Brown's 7-year plus attempts to relitgate the revocation of her nursing license), *See*, *Brown*, *Id*. Vexatious litigants often have multiple relitigations against the same defendant after a judgment had been rendered against them. Frequently, there are orders from multiple courts defining motions and lawsuits as frivolous, orders of sanctions, and findings of malicious behavior.

66. Kenneth L. Harris is apparently no stranger to litigation. *see*, *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). In a fifteen year period, he has filed thirty pro se lawsuits in Dallas County, and **had been held in contempt of court twelve times**. Neither court orders nor injunctions seem to dissuade Harris from filing lawsuits. When the Unauthorized Practice of Law Committee obtained a permanent injunction prohibiting Harris from engaging in the unauthorized practice of law, Harris violated the injunction and continued to file lawsuits. By 2006, five of Harris' lawsuits had been dismissed with prejudice since 2002.

67. Peter Beasley is not vexatious in his zealous, two-year pursuit to redress the alleged wrongs committed by defendants against him. Defendant's claim that he epitomizes vexatious activity is false, and is a false legal argument.

68. **Beasley steadfastly continues to seek his day in court**.

Unconstitutional to Require Security to Continue His Appeal

69. Plaintiff is not vexatious and the request that he post security to commence, maintain, or cause to maintain any other existing lawsuit or legal action by Peter Beasley, pro se or with an attorney, is unwarranted and is unconstitutional, and should be denied, ***with prejudice***.

70. Defendant's obvious goal with the vexatious litigant motion is to 1) require Beasley to post security in order to maintain his appeal of the November 3, 2017, attorney fee order, 2) dismiss this current lawsuit upon some inability to post security, and 3) to avoid discovery and public ridicule for defendant's misdeeds. Defendants and their many lawyers are trying desparately to hide the truth.

71. But**, Beasley prevailed in his recent *denied* mandamus petition**, No. 05-18-00553, which defined that this court may not order Beasley to post a security to continue his appeal, or to post security to maintain any on-going litigations that preceded the determination of this motion. Exhibit B.

72. The 162nd District Court, Judge Moore, cannot interfere with Beasley's pending appeal to overturn its erroneous prior rulings.

No Authority to Bring the Claim

73. Lastly, opposing counsel has no authority to defend this lawsuit nor to bring the claim. Plaintiff reasserts his pending Rule 12 challenge against lawyers Vogel, Bragalone, and Garcia.

74. Their vexatious litigant motion should be stricken.

Wherefore, plaintiff requests the court deny defendant's vexatious litigant motion, *with prejudice*, enter findings of fact and conclusions of law, and find Defendant's motion was groundless and frivolous, filed in bad faith and for the purpose of delay. Plaintiff asks that defendants and their counsel be sanctioned.

Respectfully submitted,

/s/ Peter Beasley
Peter Beasley
P.O. Box 831359
Richardson, Texas 75083
972-365-1170

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2018, a true copy of the foregoing instrument was served on counsel for defendants, and the electronic transmissions were reported as complete.

/s/ Peter Beasley
Peter Beasley

FRYAR LAW FIRM P.C.

via email pbeasley@netwatchsolution.com

Peter Beasley
President
Netwatch Solutions, Inc.

November 17, 2017

Re: Cause No. DC-16-03141; *Beasely v. Society of Information Management*, in the 162nd Judicial District Court, Dallas County, Texas

Dear Mr. Beasley:

You have asked for my legal opinion as to your right to speak with and contact members of SIM-DFW, in light of the Order of the 162nd District Court regarding such contacts. My opinion, for the reasons stated below, is that you are free to contact those individuals to the same extent as you would be to contact, communicate, or associate with anyone else.

The issue came up in the above-referenced litigation in connection with your attempts to interview and conduct informal discovery of other members of SIM-DFW. Mr. Vogel objected to such contacts on the grounds that these persons were individually represented by him and that you as a pro se party should be required to go through counsel. Legally, Mr. Vogel never represented the individual members; he only represented the organization. However, the Court erroneously accepted Mr. Vogel's position. Second, the ethical rules prohibiting lawyers from contacting represented individuals do not apply to you. Nevertheless, the Court also agreed that your efforts should be though counsel.

On February 22, 2017, the Court signed an Order granting in part and denying in part a motion to compel discovery filed by you. That Order stated in relevant part: "The Court further Orders that Plaintiff's request to speak to members of SIM-DFW is DENIED and any requests to depose SIM-DFW members who are represented by counsel is to be done via request for deposition pursuant to the Texas Rules of Civil Procedure." The Court has broad discretion to regulate discovery; therefore, even though the legal basis for the Order was erroneous, the Court had the power to enter it.

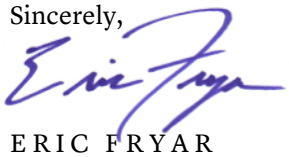
It is important to understand the following: 1. You were not ordered not to contact SIM-DFW members. 2. No temporary injunction was entered against you. 3. The Order is merely a denial of your request and direction from the Court regulating discovery. Nevertheless, based on the expressed attitude of the Judge, and out of an abundance of caution, you treated the Order as though it were a temporary injunction prohibiting contact.

You nonsuited the lawsuit on October 5, 2017. While the Court maintained jurisdiction over collateral matters, the nonsuit ended the proceeding on the merits. The nonsuit necessarily ended the effect of all orders regulating discovery and would have terminated even a temporary injunction had one been entered. Therefore, the Order no longer has any legal effect.

The First and Fourteenth Amendments to the Constitution protect the right of association. Therefore, you are legally free to talk to, contact, and associate with SIM-DFW members. Of course, you may still be subject to liability if your communications violate other legal duties—e.g., if you falsely defame Mr. Vogel to a SIM-DFW member, he might sue you for slander.

I hope this answers your question. Please contact me if you have any further concerns.

Sincerely,



ERIC FRYAR

912 Prairie Street, Suite 100 | Houston, Texas 77002-3145 | t: 281-715-6396 | f: 281-605-1888
*****@fryarlawfirm.com | www.ShareholderOppression.com | www.FryarLawFirm.com

DENY and Opinion Filed May 22, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00553-CV

IN RE PETER BEASLEY, Relator

Original Proceeding from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278

MEMORANDUM OPINION

Before Justices Francis, Evans, and Schenck
Opinion by Justice Schenck

Before the Court is relator's May 14, 2018 petition for writ of injunction and petition for writ of mandamus. This is the third original proceeding filed by relator since April 5, 2018. In this original proceeding, relator complains that the trial court has taken no action on his May 8, 2018 motion for disqualification and recusal of Judge Maricela Moore and seeks a writ of mandamus directing Judge Moore to act on the motion. Relator also seeks a writ of injunction enjoining Judge Moore from ruling on the motion to designate relator as a vexatious litigant filed by the real parties in interest, from ordering relator to post security to maintain his appeals in this court, and from ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. For the following reasons, we deny the relief requested.

Writ Jurisdiction

This Court's writ jurisdiction is governed by section 22.221 of the Texas Government Code. This Court "may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against (1) a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district. . . ." TEX. GOV'T CODE ANN. § 22.221(b)(1) (West Supp. 2017). To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *n re ru ential ns. o.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding).

This Court's injunctive powers, however, are more limited. "Each court of appeals ... may issue ... all ... writs necessary to enforce the jurisdiction of the court." TEX. GOV'T CODE ANN. § 22.221(a) (West Supp. 2017). A court of appeals "has no original jurisdiction to grant writs of injunction, except to protect its jurisdiction over the subject matter of a pending appeal, or to prevent an unlawful interference with the enforcement of its judgments and decrees." *tt v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ); *see* TEX. R. APP. P. 24.3; *see also o son v. ole an*, No. 01-01-00114-CV, 2002 WL 1340314, at *7 (Tex. App.—Houston [1st Dist.] June 20, 2002, pet. ref'd) (holding that attempts to suspend enforcement of judgment pending appeal are generally within the trial court's authority).

Discussion

Based on the record before us, we conclude relator has not shown he is entitled to the relief requested.

First, relator has not established that the trial court abused its discretion by not taking action on the motion to recuse within the four business days immediately following its filing. Upon notice of the filing of a motion to recuse, a trial judge has only two choices—she must promptly either voluntarily recuse herself or refer the motion to the presiding judge of the administrative

judicial district for action. *n re resley*, No. 05-00-00793-CV, 2000 WL 688239, at *1 (Tex. App.—Dallas May 23, 2000, orig. proceeding) (citing TEX. R. CIV. P. 18a (c), (d) and *reen er Benson is an iel er v. o ell*, 685 S.W.2d 694, 695 (Tex. App.—Dallas 1984, orig. proceeding). "Thus, it is a clear abuse of discretion for the trial judge to not act on a motion for recusal in one of the two required ways." . But the requirement for prompt action does not equate to a mandate for immediate action. *See en. Motors or . v. vins*, 830 S.W.2d 355, 358 (Tex. App.—Corpus Christi 1992, no writ) (a trial judge is permitted to hold a hearing to determine whether to recuse or refer); *see also n re rai* , 426 S.W.3d 106, 107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding) (a trial court has a reasonable time within which to consider a motion and to rule); *n re Sar issian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding) (same).

Here, relator filed the motion to recuse on Tuesday, May 8, 2018 and filed this petition on Monday, May 14, 2018. He has provided no evidence showing what action, if any, Judge Moore has taken on the motion since its filing. Further, he has presented no evidence that he has brought the motion to the trial court's attention and requested a ruling. As such, relator has not established that the trial judge has refused to act promptly on the motion to recuse and has not established an abuse of discretion. Accordingly, we deny relator's petition for writ of mandamus.

We also deny relator's request for injunctive relief. Relator asks the Court to enjoin the trial court from (1) ruling on the motion to designate relator as a vexatious litigant, (2) ordering relator to post security to maintain his appeals in this court, and (3) ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. Should the trial court rule on the motion to designate relator as a vexatious litigant, relator is statutorily permitted to appeal that ruling. TEX. CIV. PRAC. & REM. CODE § 11.101(c) ("A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious

litigant"). Further, a vexatious litigant order would not apply to currently pending appeals. TEX. CIV. PRAC. & REM. CODE § 11.101(a) (generally authorizing court to enter order prohibiting person from filing new litigation pro se without permission from local administrative judge when court finds that person is "vexatious litigant" after notice and hearing). Finally, the trial court maintains jurisdiction to determine issues related to supersedeas, and relator has appellate remedies available to him regarding supersedeas orders. TEX. R. APP. P. 24.3, 24.4; *see Bur v. o nson*, 445 S.W.2d 631, 632 (Tex. Civ. App.—El Paso 1969, no writ) ("Both injunction and prohibition do not lie where there is an adequate remedy through the ordinary channels of procedure."). As such, any future actions taken by the trial court as to the vexatious litigant motion or as to supersedeas related to a current appeal do not interfere with this Court's jurisdiction or with this Court's enforcement of its judgments or decrees. We find nothing in this record indicating that an injunction is necessary here.

To the extent relator's requests can be construed as seeking a writ of prohibition, we deny that relief as well. A writ of prohibition is used to protect the subject matter of an appeal or to prohibit an unlawful interference with enforcement of an appellate court's judgment. *ollo ay v. ift ourt of eals*, 767 S.W.2d 680, 683 (Tex. 1989) (orig. proceeding). The writ is designed to operate like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. . at 682–83. A writ of prohibition has three functions: (1) preventing interference with higher courts in deciding a pending appeal; (2) preventing an inferior court from entertaining suits that will re-litigate controversies already settled by the issuing court; and (3) prohibiting a trial court's action when it affirmatively appears the court lacks jurisdiction. *u le l. o. n . v. al er*, 641 S.W.2d 941, 943 (Tex. App.—Dallas 1982, orig. proceeding).

As discussed above, the trial court's future actions regarding the vexatious litigant motion or supersedeas issues will not interfere with this Court's jurisdiction over a pending appeal.

Moreover, no settled controversy appears in the record, and there is no evidence that the actions relator seeks to prohibit are outside of the trial court's jurisdiction. Relator has, therefore, not established a right to a writ of prohibition.

Accordingly, we deny relator's petition for writ of injunction and deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

180553F.P05

Tab E

EXHIBIT C

Cause No. DC-18-05278

PETER BEASLEY,	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
SOCIETY OF INFORMATION	§	
MANAGEMENT, DALLAS AREA	§	
CHAPTER, JANIS O'BRYAN, NELLSON BURNS	§	44th JUDICIAL DISTRICT

PLAINTIFF'S 1ST AMENDED ANSWER, GENERAL DENIAL AND AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff/Counter-Defendant, Peter Beasley, and in support of this 1st Amended Answer, General Denial and Affirmative Defenses, states the following:

GENERAL DENIAL

1. Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff/Counter-Defendant generally denies each and every, all and singular, of the material allegations contained in Defendant/Counter-Plaintiff's Original Counterclaim and any supplements or amendments thereto, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

2. Plaintiff/Counter-Defendant hereby states the following affirmative and additional defenses to the Defendant/Counter-Plaintiff's Original Counterclaim (and any supplements or amendments thereto), but do not assume the burden of proof on any such defenses except as otherwise required by law. Plaintiff/Counter-Defendant reserves the right to assert additional defenses and to otherwise supplement or amend this Answer. Each of these defenses is pled in the alternative, as all liability is denied.

- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by estoppel.
- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by the doctrine of consent.
- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by laches.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements are true.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements are true.

- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by privilege of statements made in the court of judicial proceedings.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Defendant/Counter-Plaintiff's own acts or omissions caused or contributed to the Defendant/Counter-Plaintiff's alleged injury.
- Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements, if any, were made without malice.
- Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because none of the statements claimed by Defendant/Counter-Plaintiff's to be defamatory were authored by Plaintiff/Counter-Defendant.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by the doctrine of consent.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by common-law qualified privilege.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Defendant/Counter-Plaintiff's reputation was previously diminished.
- Defendant/Counter-Plaintiff's claim for exemplary damages as part of his defamation claims is barred, in whole or in part, because Defendant/Counter-Plaintiff's failed to comply with the Defamation Mitigation Act.
- Defendant/Counter-Plaintiff's claims for declaratory judgment are barred, in whole or in part, because this court does not have jurisdiction to clarify or modify a judgment from another court.

WHEREFORE: For the foregoing reasons, Plaintiff pray that Defendant Nellson Burns and Defendant SIM Dallas Area Chapter take nothing by way of their claims, that Plaintiff/Counter-Defendant recover his attorneys' fees, costs and expenses as allowed by law, and for such other and further general relief, at law or in equity, as the ends of justice require and to which the evidence may show it justly entitled.

Respectfully submitted,
/s/Peter Beasley
Peter Beasley, pro se
P.O. Box 831359

Richardson, TX 75083-1359
(972) 365-1170
pbeasley@netwatchsolutions.com

Certificate of Service

I hereby certify that on the 29th day of April 2018, a true copy of the foregoing instrument was served on opposing counsel for the defendants by electronic means and the electronic transmissions were reported as complete.

/s/Peter Beasley
Peter Beasley

EXHIBIT C

Tab F

EXHIBIT C

Filed: 3/2/2018 3:06 PM
Lynne Finley
District Clerk
Collin County, Texas
By Tatiana Ortega Deputy
Envelope ID: 22906127

296-05741-2017

CAUSE NO. ~~417-05741-2017~~

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS O'BRYAN, NELLSON BURNS,	§	**COLLIN COUNTY, TEXAS**
	§	
	§	
	§	
Defendants.	§	**~~417~~ TH JUDICIAL DISTRICT**

DEFENDANTS' ORIGINAL COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants Society of Information Management, Dallas Area Chapter[1] ("SIM-DFW"), Janis O'Bryan ("O'Bryan") and Nellson Burns ("Burns") (collectively referred to as "Defendants") and file this Counterclaim, subject to Defendants' pending Motion to Transfer Venue, Against Plaintiff/Counter-Defendant Peter Beasley and would show the Court the following:

I.
FACTS

1. The Society of Information Management, founded in 1969, is a national, professional society of information technology leaders whose goal is to connect senior level IT leaders with peers in their communities, to provide opportunities for collaboration to share

[1] Defendant SIM-DFW is incorrectly named by Plaintiff/Counter-Defendant Peter Beasley. The organization's name is the Society for Information Management, Dallas/Fort Worth Chapter.

knowledge, provide networks, give back to local communities, and provide its members with opportunities for professional development.

2. Locally, SIM-DFW, is one off the largest chapters, with more than 300 members in 2018. SIM-DFW meets most months to engage in social networking and conversations about important managerial and technical issues facing IT practitioners.

3. Plaintiff/Counter-Defendant Peter Beasley was a member of SIM-DFW from September 2005 to April 19, 2016. In early 2016 a disagreement arose between Peter Beasley, then a member of the Executive Committee, and the other Committee members. The subject of the disagreement is undisputed: Peter Beasley believed, and continues to believe, that SIM-DFW is engaged in waste and mismanagement of the organization's finances because the Board determined that it was not going to fully fund his, or any Committee member's, budget request.

4. As a result of the ongoing disagreement with the Executive Committee, on March 17, 2016, Beasley, *pro se*, filed a lawsuit in the 162nd Judicial District Court, Dallas County, Texas, Cause No. DC-16-03141 ("Original Lawsuit") against SIM-DFW. Initially, Beasley chose not to serve the Original Lawsuit and instead informally provided it to SIM-DFW's Board via email and threatened to force SIM-DFW into costly and distracting litigation unless he could be promised a meeting wherein a "real option to reverse some of the final decisions" he'd been informed of was offered. However, in filing his lawsuit, Beasley confirmed that he had no intent to work within the existing group governance structure and further confirmed that he was a bad fit for the organization.

5. The Executive Committee, surprised at having been sued, evaluated a response to the lawsuit and discovered that in addition to aggressively seeking to control the organization, Beasley was using the organization to solicit business from members — a violation of the rules of

the organization. He also violated other SIM-DFW rules, including binding SIM-DFW to a monetary obligation in excess of the budgeted amounts for a meeting he organized, and other *ultra vires* acts. The Executive Committee decided that the violations supported good cause for expulsion and called a meeting to consider his expulsion from SIM-DFW.

6. In response to receiving notice of the expulsion meeting, Plaintiff made good on this threat to engage SIM-DFW in litigation and improperly secured an *ex parte* TRO preventing SIM-DFW from moving forward with a planned meeting. He did this even though he'd been advised that SIM-DFW was represented by Peter Vogel and after engaging in several emails with Mr. Vogel regarding a potential informal mediation. Beasley then formally served his now amended claims against SIM-DFW and, in a move that can only be described as harassing and vindictive, added Janis O'Bryan, then –President of SIM-DFW, in her individual capacity as a defendant.

7. From these beginnings, Beasley and SIM-DFW (and various individual Executive Committee members) have been engaged in nearly two years of litigation. For much of the last two years Peter Beasley has chosen to remain *pro se*. But at various times he has retained the services of counsel — typically to respond to or argue a specific motion. The Original Lawsuit ended when his last set of attorneys (Eric Fryar and Christina Richardson of the Fryar Firm) filed a non-suit without prejudice of his claims against SIM-DFW and the claims of his company, Netwatch Solutions, against Nellson Burns, a Board Member, 2017-2018 President of SIM-DFW, and a customer of Netwatch Solutions.

8. After the October 5, 2017 non-suit was filed, the day before the responses to SIM-DFW and Nellson Burns's motions for summary judgment were due, SIM-DFW filed a motion seeking Rule 13 and CPRC Chapter 10 sanctions against Beasley and *all* of his attorneys.

The Dallas County Court held a hearing on October 31, 2017 and expressed an intent to deny SIM-DFW's requested sanctions but asked the attorneys to provide supplemental briefing on the issue of whether or not, in light of the timing of the non-suit and the inferences that could be drawn from Beasley's litigation behavior, good cause existed to declare SIM-DFW the prevailing party on Beasley's Declaratory Judgment Act Claims.

9. The requested briefing was provided and the Court continued the hearing on the Motion for Sanctions to November 3, 2017. By order of the same date the Court declared SIM-DFW a prevailing party and awarded SIM-DFW $211,032.02 in attorneys' fees.[2]

10. Five days later, Beasley's attorneys were fired and Beasley, again *pro se*, began an onslaught of motions practice. Filing multiple motions to recuse and disqualify the Honorable Judge Maricela Moore of the 162nd Court and attorney Peter Vogel (all denied), an *ex parte* motion seeking a continuance of the hearing on his motion to recuse and disqualify Judge Moore (denied), two Petitions for Writ of Mandamus seeking to overturn the November 3rd Order (denied), a motion to modify the final judgment (denied), a motion seeking sanctions against SIM-DFW's attorneys (denied), and a Bill of Exceptions (denied).

11. While filing these harassing motions in Dallas County Civil District Court, Beasley also voluntarily dismissed an appeal filed by his former attorneys, filed a second appeal, and, ***incredibly***, filed this lawsuit in Collin County re-urging claims that had already been brought in Dallas County **including those same Declaratory Judgment Act claims for which SIM-DFW has been declared a prevailing party**!

[2] See, Order attached hereto as **Exhibit A**.

12. Beasley's remedy to challenge the November 3, 2017 Order granting attorneys' fees and declaring SIM-DFW a prevailing party on Beasley's Declaratory Judgment Act claims is appeal. His attempts to re-litigate those same claims, and dispute the attorneys' fees award by filing the current lawsuit in Collin County is an abuse of everything that our judicial system represents.

II.
COUNTER-CLAIMS

DECLARATORY JUDGMENT SUPPLEMENTAL RELIEF

13. Defendants/Counter-Plaintiffs request that this Court enter a Declaratory Judgment pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE Section 37.011 that provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper..

14. Defendants/Counter-Plaintiffs request that this Court enter an ORDER confirming that Defendant SIM-DFW prevailed on Beasley's Declaratory Judgment Act Claims as pled first in Dallas County and now re-pled in Collin County. Specifically, SIM-DFW seeks that this Court, consistent with the Dallas County District Court's November 3, 2017 Order, declare as follows:

a. Beasley's April 19, 2016 expulsion from SIM-DFW was consistent with SIM-DFW's Bylaws, did not violate any due process protections under the Texas Constitution, and did not violate any applicable provision of the Texas Business Organizations Code;

b. The actions of the SIM-DFW Board of Directors taken after April 19, 2016 were performed with all necessary formalities and consistent with the SIM-DFW Bylaws and are not subject to ratification by Beasley, a non-member; and

c. SIM-DFW's efforts to provide philanthropy are consistent with the SIM-DFW Bylaws and SIM-DFW's Articles of Incorporation to the extent such philanthropic giving is approved by the SIM-DFW Board of Directors.

15. The clarification of the Dallas County District Court's November 3, 2017 Order is necessary to prevent further attempts by Counter-Defendant Beasley to continue to litigate issues related to his April 19, 2017 expulsion from SIM-DFW.

16. Pursuant to Chapter 37 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Defendants/Counter-Plaintiffs request that this Court award all reasonable attorneys' fees incurred in this case and through any appeal of this matter by Beasley to Defendants/Counter-Plaintiffs.

DEFAMATION PER SE

17. Defendant/Counter-Plaintiff Nellson Burns has been pursued relentlessly by Beasley. Burns was initially named a defendant in the Dallas County lawsuit in June 2016 and then in February 2017, those claims were dismissed by Beasley. Only weeks later, Beasley's company, Netwatch Solutions, intervened in the Dallas County lawsuit and sued Burns individually for allegedly tortiously interfering with Burns's then-employer's contract with Netwatch Solutions.

18. The intervention claim never had any merit. Burns, the then-CIO of his company, could not tortiously interfere with his own company's contract with Netwatch Solutions. Burns's company was forced to retain counsel and participate in discovery and tellingly confirmed with Netwatch's counsel in July 2017 that there could be no tortious interference claim against Burns in the context of his role with Netwatch because (1) no contract between the company and Netwatch was terminated and (2) it was the poor judgment demonstrated by Beasley in pursuing

the discovery from Burns's company, and not any act or omission committed by Burns, that led to the company terminating all commercial relationships with Netwatch.

19. After the claims against Burns were non-suited, Burns left his company for another opportunity. However, Beasley's harassment of Burns did not stop. At multiple times in writings to Burns's colleagues in the IT industry, Beasley has alleged that Burns was "terminated" due to his tortious interference with the contractual and business relationship between Burns's then-employer and Netwatch.

20. Specifically, Beasley has made the following defamatory statements to Burns's colleagues and professional contacts in the IT industry:

a. "Nellson Burns is destroying the Dallas SIM Chapter and is wasting its assets for the sole purpose to hide his bad acts."

b. "Nellson has now been fired from [his former employer] because of how he needlessly embroiled his employer in this conflict."

c. "Sworn depositions from [Nellson Burns's former employer's] VP of Internal Audit proved that Nellson Burns lied to his corporate audit department about me and this conflict with SIM."

d. "[Nellson Burn's] staff also swore that Nellson Burns lied to them too."

21. Each of the above-statements is an assertion of fact that is objectively verifiable. Yet, Beasley has chosen, out of malice, to broadcast and publish these statements to colleagues and professional contacts in the IT industry in an attempt to harm Burns in his office, profession, and occupation.

22. Alternatively, Beasley has defamed Burns by innuendo or by implication by omitting material facts or juxtaposing facts in connection with the above statements.

23. Burns has suffered general damages as a result of Beasley's defamatory statements. Accordingly, Burns asks this Court to award his general damages, to be established at trial, pre and post-judgment interests, and costs of court in excess of $20 as allowed by Tex. R. Civ. P. 137.

III.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiffs' pray that Counter-Defendant be cited to appear and answer herein, that upon final trial and other hearing of this cause that Counter-Plaintiffs' recover damages from Counter-Defendant in accordance with the evidence and as the jury deems them deserving, that Counter-Plaintiffs' recover costs and attorneys' fees, interest, both pre-judgment and post-judgment, as allowable by law, and for such other further relief, both general and special, both in law and in equity, to which Counter-Plaintiffs' may be justly entitled.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI

/s/ Soña J. Garcia
ROBERT A. BRAGALONE
State Bar No. 02855850
BBragalone@gordonrees.com
SOÑA J. GARCIA
State Bar No. 24045917
SJGarcia@gordonrees.com

2200 Ross Avenue, Suite 4100 West
Dallas, Texas 75201-2708
214-231-4660 (Telephone)
214-461-4053 (Facsimile)

GARDERE WYNNE SEWELL LLP

PETER S. VOGEL
State Bar No. 20601500
2021 McKinney Ave. Ste. 1600
Dallas, Texas 75201
pvogel@gardere.com
214-999-3000 (Telephone)
214-999-4667 (Facsimile)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served pursuant to TEXAS RULES OF CIVIL PROCEDURE 21 and 21a on March 2, 2018.

/s/ Soña J. Garcia
Soña J. Garcia

CAUSE NO. DC-16-03141

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER,	§	
	§	
	§	
Defendant	§	**162ND JUDICIAL DISTRICT**

ORDER GRANTING ATTORNEY'S FEES TO DEFENDANT AS PREVAILING PARTY ON DECLARATORY JUDGMENT CLAIMS

On November 3, 2017, Defendant's Supplemental Motion for Sanctions seeking to have Defendant declared a prevailing party and request for attorneys' fees came on for hearing. The Court, having considered the pleadings, evidence, and arguments of counsel, is of the opinion that the Defendant's Motion should be **GRANTED**.

Based on the evidence presented and the procedural history of this lawsuit, the Court makes the following findings and conclusions:

1. Plaintiff filed certain declaratory judgment claims on April 15, 2016.
2. Defendant moved for summary judgment on those claims.
3. The hearing on the motion for summary judgment was scheduled for October 12, 2017, making Plaintiff's response due on October 5, 2017.
4. On October 5, 2017, in lieu of filing a response to the motion for summary judgment, Plaintiff nonsuited his entire case.

5. The following factors support a finding that the nonsuit was filed to avoid an unfavorable ruling on the merits:

   (a) the timing of the nonsuit;

   (b) the strength of the motion for summary judgment;

   (c) the failure to respond to the motion;

   (d) the Plaintiff's prior litigation history, including a dismissal of all claims after resting his case during trial, which dismissal he then appealed to the Dallas Court of Appeals[1]; and

   (e) Plaintiff's conduct during this very contentious litigation, including his conduct as a *pro se* party and as a Plaintiff in conjunction with five different appearances by lawyers, involving the resources of eight (8) different judges in six (6) different courts.

6. The reasonable and necessary attorney's fees and costs incurred by Defendant in defense of the declaratory judgment claims is $ 211,032.02

IT IS THEREFORE ORDERED that Defendant is declared the prevailing party on Plaintiff's declaratory judgment claims and that, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 37.009, Plaintiff Peter Beasley is hereby **ORDERED** to pay Defendant's reasonable and necessary attorney's fees and costs in the amount of $ 211,032.02

[1] *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, in the Court of Appeals for the Fifth District of Texas at Dallas, No. 05-15-00156-CV (September 20, 2016)

SIGNED this 3 day of ~~October~~ November, 2017.

Presiding Judge

Tab G

EXHIBIT C

FILED
DALLAS COUNTY
4/20/2018 12:51 PM
FELICIA PITRE
DISTRICT CLERK

DALLAS COUNTY DISTRICT CLERK
FELICIA PITRE

Sacheen Anthony

NINA MOUNTIQUE, CHIEF DEPUTY

4/20/2018

Peter Beasley
pbeasley@netwatchsolutions.com

Cause No. DC-18-05278 44th District Court (COLLIN 417-05741-2017)

Peter Beasley vs. Society of Information Management, Dallas Area Chapteret al

Dear Peter Beasley

In Accordance with the ***Rule 89 of the Texas Rules of Civil Procedure***, you are notified that a Transfer of the referenced case to a District Court of Dallas County, Texas has been completed.

The filing fee of 292.00 is due and payable within thirty days from the date of this letter. If the filing fee is not paid within 30 days, a motion to rule for cost will be filed.

Make payment to: Felicia Pitre, District Clerk 600 Commerce Street Ste. 101, Dallas, Texas 75202. Attention File Desk.

Please put the cause number on your check and send it with a copy of this letter. For further assistance, please direct all calls to the transfer desk at (214) 653-6548 of the Civil/Family District Clerk Office.

Sincerely,

SACHEEN ANTHONY, DEPUTY

Cc: